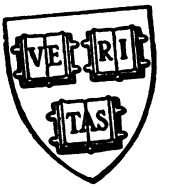
THE STORY OF THE CONSTITUTION OF THE UNITED STATES

ROSSITER JOHNSON



To Miss Edith L. Thayer,
from her friend
Rossiter Johnson.
No. 34 Union Square,
New York.
April 10, 1906.

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BY

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A covenant with all the people,
to proclaim liberty unto them.
—JEREMIAH.

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CHAPTER I

INTRODUCTORY

A CONSTITUTION is a code of laws drawn up or adopted by a people for the government and guidance of their rulers. It assumes that sovereignty—that is, ultimate and supreme right and power—resides in the people, and that all office-holders are their servants. It is a thus far shalt thou go and no farther. And the principle is the same whether the rulers be hereditary princes or a majority of the people themselves acting through chosen representatives. Historically, such a code has been called a charter; but in modern usage that declaration by which a sovereignty defines and limits its own powers, or the powers and duties of its rulers, or the powers of a majority as opposed to a minority, is called a constitution, and that by which it delegates certain powers to an organization within its jurisdiction—as a colony or a city—is called a charter.

Whatever may be the form of government, in the last analysis the people are the sovereigns, and the exercise of sovereignty goes with a majority of the military power. For if there is an absolute or hereditary ruler, he is so because a majority of the people, or a majority of the arms-bearers, have chosen that he shall be, or because they submit to his continuance. Whenever they are agreed to have it otherwise, his reign comes to an end, no matter if his empire and his prescriptive rights be a thousand years old. They may execute him, as they executed Charles I and Louis XVI, or they may simply depose him as they deposed Dom Pedro II of Brazil. They may or may not be wise in doing this, and may or may not be fortunate in their new government; but the sovereignty resides in them, and they have exercised it. When they have enthroned a king, he may call himself a sovereign, and speak of them as his subjects—and in theory they are such—but in fact he is their servant, and if the service is bad they will not accept it forever. If they prescribe limits to his powers, that prescription of limits, as far as it goes, is a constitution. It is common to speak of his giving them a constitution, but instead it is they that give one to him, for it is only by their sufferance that he is on the throne at all, and usually it is because he has been made to realize this that he graciously "grants" the people a constitution.

The philosophy of a constitution, stated simply, is this: Every individual in a community knows that he may at times find himself in the minority, and, in order that he may not then be subjected to injustice or undue disadvantage, he is willing that the majority, even when he is with it, shall limit its own powers. Following this, the statesmen that write constitutions bear in mind that executives and legislators are human, and unless limits are fixed they are liable sometimes to transcend the bounds of expediency or safety and establish mischievous precedents.

The so-called British Constitution is a series of precedents and traditions observed by the legislators and the executive, but not all formulated in writing. Strictly speaking, it is not a constitution at all; for Parliament may, if it choose, enact laws that transcend all the precedents and traditions, and such laws would be held good and binding until the people could elect another Parliament to repeal them. If they were not repealed, they would ultimately be considered amendments or additions to the Constitution. The will of Parliament is the supreme law of the land. Nominally the sovereign has the veto power, but it is a long time since it was exercised. Professor Edward S. Creasy thus defines the English Constitution:

"An impartial and earnest investigator will recognize and admire, in the history, the laws, and the

institutions of England, certain great leading principles, which have existed from the earliest periods of our nationality down to the present time; expanding and adapting themselves to the progress of society and civilization; advancing and varying in development, but still essentially the same in substance and in spirit. These great primeval and enduring principles are the principles of the English Constitution. And we are not obliged to learn them from imperfect evidences or precarious speculations; for they are imperishably recorded in the Great Charter and in the charters and statutes connected with and confirmatory of Magna Carta. In Magna Carta itself—that is to say, in a solemn instrument deliberately agreed on by the King, the prelates, the great barons, the gentry, the burghers, the yeomanry, and all the freemen of the realm, at an epoch which we have a right to consider the commencement of our nationality, and in the statute entitled *Confirmatio Cartarum* which is to be read as a supplement to Magna Carta —we can trace these great principles, some in the germ, some more fully revealed. And thus, at the very dawn of the history of the *present* English nation, we behold the foundations of our great political institutions imperishably laid. These great primeval and enduring principles of our Constitution are as follows:

"1. The government of the country by an hereditary sovereign, ruling with limited powers, and bound to summon and consult a parliament of the whole realm, comprising hereditary peers and elective representatives of the commons.

"2. That without the sanction of Parliament no

tax of any kind can be imposed; and no law can be made, repealed or altered.

"3. That no man be arbitrarily fined or imprisoned; that no man's property or liberties be impaired; and that no man be in any way punished, except after a lawful trial.

"4. Trial by jury.

"5. That justice shall not be sold or delayed.

"These great constitutional principles can all be proved, either by express terms, or by fair implication, from Magna Carta and its above-mentioned supplement. Their vigorous development was aided and attested in many subsequent statutes, especially in the Petition of Right and the Bill of Rights; in each of which the English nation, at a solemn crisis, solemnly declared its rights, and solemnly acknowledged its obligations—two enactments which deserve to be cited, not as ordinary laws, but as constitutional compacts, and to be classed as such with the Great Charter, of which they are the confirmers and the exponents. Lord Chatham called these three 'the Bible of the English Constitution,' to which appeal is to be made on every grave political question. The great statesman's advice is still sound."

The Constitution of the United States has been treated by some as an original document, as a work of creative genius—an idea that found its extreme expression in Mr. Gladstone's famous declaration: "The American Constitution is the most wonderful work ever struck off at a given time by the brain

and purpose of man." And on the other hand the attempt has been made to show that it is drawn entirely from the British Constitution. But neither of these declarations is wholly true.

CHAPTER II

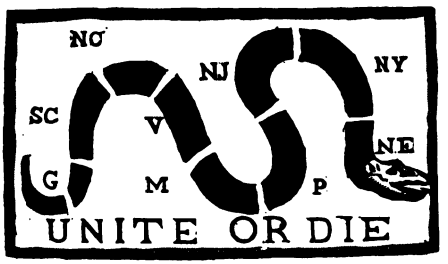
THE FIRST ATTEMPT

It is the misfortune of coalitions that as soon as the immediate object is attained they cease to coalesce. Coalition cabinets and administrations have seldom existed long or produced any satisfactory results. A coalition of parties sometimes defeats the common opponent, and great is the rejoicing thereat; but it immediately appears that there are irreconcilable differences over the division of spoils or the determination of policy. Each of the thirteen colonies had its own governmental organization, its own interests, and ideas of its own importance. Their union at first was hardly more than a coalition against King and Parliament. When they took up the subject of forming a general government for all, hardly one of them was willing to give up that which must necessarily be surrendered if such a purpose was to be attained. The satisfaction of colonial jealousies and the preservation of temporary advantages

and local pride appeared to be of more importance than uniform laws and the protection of a central power; just as the bonfire on the common looks larger and feels warmer than the sun in heaven. Besides a confederation of the New England colonies, there had been other attempts at union, for defense against the Indian tribes as well as for protest against taxation. The most notable of these was in 1754, when a convention was held in Albany, N. Y., at which delegates were present from the four New-England colonies, from New York, Pennsylvania, and Maryland, and from the Six Nations of the Iroquois. A plan of union for the colonies, devised mainly by Benjamin Franklin, was adopted, subject to the approval of the British Parliament. There was to be a president-general, nominated and paid by the Crown, and a council of forty-eight members chosen for a term of three years by the colonial legislatures. This council was to provide for the common defense and have general legislative powers, subject to the veto of the president-general. But the British Board of Trade, which had called the convention, rejected the scheme, saying that it gave dangerous powers to the colonies, while the colonies objected on the ground that it gave the Crown too much authority in local affairs.

The art of visual argumentation, by means of cartoons and caricatures, was not so common then as at

present, but it appeared occasionally in the public prints. The accompanying illustration was published in Franklin's paper, the "Pennsylvania Gazette." But nothing at that time could rouse the colonists to the necessity for union.



It has been pointed out that there were decided differences in race and religion between the colonies: that the New-England people were English and Puritan, those of New York largely Dutch and Lutheran, with Quakers and Lutherans in Pennsylvania, many Catholics in Maryland, and adherents of the Church of England in Virginia and the Carolinas. But there is little indication that these differences were an obstacle to union. While a perfection of religious liberty was not enjoyed in all the colonies, there was no disposition to interfere with one another or to assume an attitude of ecclesiastical antagonism. Nor did the fact that some of the colonies were chartered and others proprietary play any part in delay-

ing union. The forces that did it were imaginary commercial advantage, provincial jealousy, and dread of conferring power upon other than local authorities. Some of the colonies that had good and advantageously situated harbors taxed others for merchandise entered thereat. Thus goods for Springfield, Massachusetts, came into the harbor of Saybrook, Connecticut, and were subjected to a duty; so too of cargoes that entered at Newport or Providence, Rhode Island, and were destined for towns in Massachusetts. The control of New York bay was a matter of dispute between three colonies; Virginia and Maryland quarreled over the navigation of the Potomac and Chesapeake Bay; and there were boundary disputes that sometimes led to bloodshed.

In view of these circumstances, it is hardly surprising that the first attempt at a union of all the colonies, embodied in the Articles of Confederation, was a failure.

Simultaneously with the discussion that resulted in the Declaration of Independence, the Continental Congress, recognizing its own weakness, carried on a debate concerning the necessity for some kind of central government that should bind the colonies—or States—in a closer union and make it possible for Congress to sustain the army properly, put more vigor into the war, regulate commerce on a uniform plan, and enter into relations with foreign govern-

ments. This resulted in the adoption of a resolution, June 11, 1776, that a committee be appointed to prepare articles of confederation to be discussed by Congress with a view to submitting them to the States for adoption. The committee reported in due time, but a long discussion ensued, and when finally Congress had come to an agreement and had the draft ready for submission to the several States, it was November 15, 1777. So slow was the process, in the absence of railways and telegraphs, and so many and persistent the criticisms and objections—even in face of the fact that the revolution was likely to fail for want of harmony—that it required more than three years to obtain the unanimous assent of the States. Maryland, the last to reply, gave her answer March 1, 1781.

On July 21, 1775, Benjamin Franklin had submitted to Congress a plan entitled "Articles of Confederation and Perpetual Union of the Colonies." In spite of the word "perpetual," it provided for the contingency of a return to connection with Great Britain. And this was the basis of the plan drawn by John Dickinson and reported to Congress July 12, 1776, which was debated and finally agreed to November 15, 1777.

The chief objections were to the method of apportioning taxes and quotas of men for the military service, to the power for maintaining a standing army

in time of peace, and to the retention of vast tracts of public lands by a few of the States, which held them under their original royal charters. When these charters were granted little was known of the interior of the continent, and kings were very liberal in giving away what they did not possess, what they never saw, and what they could delimit only by parallels of latitude. Connecticut, New York, and Virginia thus nominally held great regions at the West, covering indefinitely Ohio and Kentucky, with other territory. The other States held that if a union were formed, all that region should be surrendered to the Federal Government, as public land, to be the property of the whole Union. If this had not been done to a large extent, it is doubtful whether a Union could have been formed at that time; though the higher law of geographical necessity—which is above all royal decrees, all surveyors, all provincial prescription—must sooner or later have made one nation of all that dwell between the Great Lakes and the Gulf. For historical proof of this, it is only necessary to compare the medieval maps of France, Spain, Italy, Germany, and Great Britain with the present-day maps.

Connecticut and Virginia for a time reserved considerable tracts of their possessions at the West, and this incidentally gave the name Western Reserve to the northern part of Ohio.

The Articles of Confederation numbered thirteen, and bore the date July 9, 1778, because at that time eight States had ratified them and they were declared adopted. They may be summarized thus:

1. The style of this Confederacy shall be "The United States of America."

2. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right that is not expressly delegated to the United States in Congress assembled.

3. The States enter into a firm league of friendship for the common defense and general welfare—an alliance defensive but not offensive.

4. The free inhabitants of each State are to be entitled to all the privileges and immunities of free citizens in the several States, and to have freedom of travel over the whole country. No restrictions are to prevent removal of property imported into any State to any other State of which the owner is an inhabitant. Persons charged with high crimes or misdemeanors in one State are to be delivered to that State by the authorities of any other State to which they may have fled. Full faith and credit are to be given by each State to the records and judicial proceedings of every other State.

5. Congressional delegates are to be appointed annually by the State legislatures, which retain the

power to recall them and appoint others. No State is to have fewer than two or more than seven delegates; no person to be a delegate more than three years in any term of six years; no delegate to hold any office under the United States; each State to maintain its own delegates; each State in Congress to have one vote; no delegate to be questioned elsewhere for words spoken in debate, or to be subject to arrest or imprisonment in term time, except for treason, felony, or breach of the peace.

6. No State, without the consent of Congress, shall enter into any diplomatic or treaty relations with any foreign power. No person holding an office, Federal or State, shall accept any present, office or title from any foreign power, nor shall Congress or any State grant any title of nobility. No two or more States shall enter into any treaty, confederation or alliance without the consent of Congress. No State shall lay any imposts or duties that interfere with treaties made by Congress. No State, in time of peace, shall keep any vessel of war or any military force, except such as Congress may determine to be necessary for the protection of its trade; but every State shall maintain a well-regulated militia. No State, unless actually invaded or in immediate danger of invasion, shall engage in war without the consent of Congress, nor grant letters of marque and reprisal.

7. All regimental officers are to be appointed by the legislature of the State that furnishes their troops.

8. All war or other expenses incurred for the common defense or welfare are to be met by the States in proportion to the value of the real estate therein.

9. The United States shall have the exclusive right of determining on peace and war; of sending and receiving ambassadors; of making treaties; of granting letters of marque; and of appointing admiralty or maritime courts. Congress itself is to be the court of last resort in cases of dispute between two or more States. Congress shall have the right to regulate the value of coin struck by its own authority or that of the States; to fix the standard of weights and measures; and to establish post-offices. Congress shall appoint a committee of one delegate from each State, with power to act for the whole body during recess. The assent of nine of the thirteen States in Congress assembled is necessary for any of these things: to engage in war, to grant letters of marque in time of peace, to coin money, to assess expenses for the defense and welfare of the Union, to emit bills of credit or borrow money, to appropriate money, to build ships of war, raise troops, or appoint a commander-in-chief. A simple majority vote was sufficient for nothing but adjournment from day to day.

10. The Committee of the States, or any nine of

them, are authorized, in the recess of Congress, to exercise such of the powers of Congress as Congress, by the consent of nine States, may think fit to vest them with.

11. Canada may be admitted to the Confederation whenever she accedes to the Articles; but no other colony shall be admitted except on the vote of nine States.

12. All debts contracted by the authority of Congress before the adoption of these Articles shall be held a charge against the United States.

13. The Articles of this Confederation shall be inviolably observed by every State; and the Union shall be perpetual. No alteration shall be made in the Articles unless it shall be agreed to in Congress and be confirmed by the legislature of every State.

Even before these Articles of Confederation were adopted by all the States, it was evident that they were inefficient for the purpose desired. The reason is admirably set forth by Judge Story: "The States, while colonies, had been under the controlling authority of a foreign sovereignty, whose restrictive legislation had been severely felt, and whose prerogatives, real or assumed, had been a source of incessant jealousy and alarm. Of course they had nourished a spirit of resistance to all external authority; and having had no experience of the incon-

veniences of the want of some general government to superintend their common affairs and interests, they reluctantly yielded anything and deemed the least practicable delegation of power quite sufficient for national purposes." One critic said: "Congress may make treaties, but can only recommend their observance; may appoint ambassadors, but can not defray even the expenses of their tables; may borrow money in their own name, on the faith of the Union, but can not pay a dollar; may coin money, but can not import an ounce of bullion; may make war, and determine what number of troops is necessary, but can not raise a single soldier; in short, may declare everything, but can do nothing." And this was hardly an exaggeration. Congress had no power to execute any of its decrees, that privilege remaining with the States; and many of its measures were either silently disregarded or openly refused execution. The spirit that weakened the whole structure of the Articles of Confederation showed perhaps most plainly—and one might say ridiculously—in this passage: "If the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than its quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same

manner as the quota of such State; unless the legislature of such State shall judge that such extra number can not be safely spared out of the same; in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared." Such provisions remind one of the old story of an officer that, with an action in progress, refused to issue flints to his troops except as he could count them out one by one.

The wonder is, that the legislatures or people of the States should ever have supposed they could thus get something for nothing. Yet somehow they fought through the War of Independence, though at great disadvantage. Those were indeed, as Paine said, "the times that tried men's souls," and no soul was tried more than Washington's at the narrow selfishness and blank stupidity against which he struggled to keep his little army in the field. Not only did they achieve independence, but they hung together five years longer before they had a strong and practicable Constitution—one that neither endangered their liberties at home nor left them at the mercy of a foreign foe—one to which, though it has its faults, no honest appeal can be made but in the name of civil and religious freedom, even-handed justice, and national unity.

The features that the Articles of Confederation and the Constitution have in common are these:

All powers not expressly delegated to the United States are reserved to the States severally.

The citizens of each State are entitled to all the privileges and immunities of citizens in the several States.

Fugitives from justice are to be delivered up from one State to another.

Full faith and credit shall be given in each State to the acts and records of other States.

Members of Congress shall not be questioned elsewhere for words spoken in debate, and shall be privileged from arrest.

No State shall enter into treaty relations with any foreign power, lay imposts or duties, keep ships of war, or troops, or engage in war except in case of invasion.

Neither Congress nor any State shall grant any title of nobility, nor shall any person holding an office accept any gift from a foreign power.

Congress may establish courts for punishing piracies and felonies on the high seas.

Congress alone may fix the value of coin and the standard of weights and measures.

Congress may establish post-offices and post-roads and fix the rates of postage.

Congress shall publish the journal of its proceedings, except such parts as may require secrecy.

The Articles of Confederation declare that "each

State retains its sovereignty" (Article II), and that "the Union shall be perpetual" (Article XIII), which appears to be an inconsistency. Neither of these declarations is repeated in the Constitution, though the second is perhaps implied in the preamble, which declares that the purpose is "to form a more perfect Union."

That a more perfect Union was urgently needed —was, indeed, a vital necessity—had become evident. Madison wrote: "The close of the war brought no cure for the public embarrassments. The States, relieved from the pressure of foreign danger, and flushed with the enjoyment of independent and sovereign power, persevered in omissions and in measures incompatible with their relations to the Federal Government and with those among themselves." Yet the new instrument was framed only after a long contest with that spirit which sought to gain everything and give nothing.

CHAPTER III

THE NEW DEMAND

In May, 1781, Pelatiah Webster published a pamphlet in which he declared that "the authority of Congress at present is very inadequate to the performance of their duties, and this indicates the necessity of their calling a continental convention for the express purpose of ascertaining, defining, enlarging, and limiting the duties and powers of their constitution."

In 1782 the Legislature of New York passed unanimously a resolution declaring that the Confederation was defective in that it did not give Congress power to provide a revenue for itself, nor invest it with funds from established and productive sources, and that a general convention to revise the confederation should be called. Alexander Hamilton, speaking in his place in Congress, said he wished to see such a convention and should soon propose a plan for one.

In the winter of 1784–5, Noah Webster, the lexi-

cographer, published a pamphlet in which he proposed "a new system of government, which should act, not on the States, but directly on individuals, and vest in Congress full power to carry its laws into effect."

In 1785 an attempt was made to settle the long dispute between Virginia and Maryland over the navigation of Potomac River and Chesapeake Bay, by commissioners appointed for the purpose. They met at Alexandria, Virginia, considered the question, and arrived at the conclusion that greater powers were necessary before any settlement was possible. When the Virginia legislature received their report, it passed a resolution proposing a convention of commissioners from all the States, to consider plans for a uniform system of commercial relations. Five States responded by appointing such commissioners, who met in Annapolis, Maryland, in September, 1786. These commissioners made a report to Congress, in which they advised the calling of a convention composed of commissioners from all the States, to meet in Philadelphia in May, 1787, and revise the Articles of Confederation. Congress received the report, and issued the call in February; and all the States responded except Rhode Island. Mr. Madison declares that, in declining to take part in the convention, Rhode Island was "well known to have been swayed by an obdurate adherence to an ad-

vantage which her position gave her, of taxing her neighbors through their consumption of imported supplies—an advantage which it was foreseen would be taken from her by a revisal of the Articles of Confederation."

The defects that first became evident in the Articles of Confederation were the lack of any plan for raising revenue and the lack of power in Congress to regulate commerce. When, in February, 1781, a resolution was offered recommending that Congress be empowered to levy duties on imports and prize goods, in order to raise the means of paying the public debt and prosecuting the war, Rhode Island refused compliance. Her reasons were expressed in three objections: First, "that the proposed duty would be unequal in its operation, bearing hardest upon the most commercial States, and would press peculiarly hard upon that State which draws its chief support from commerce." Second, "That the recommendation proposed to introduce into the States officers unknown and unaccountable to them, and so was against the Constitution of this State." Third, "That by granting to Congress power to collect moneys from the commerce of the States, indefinitely as to time and quantity, and for the expenditure of which they would not be accountable to the States, they would become independent of their constituents, and so the proposed impost is repugnant to the liberty

of the United States." The letter in which these objections were set forth was referred to a committee consisting of Mr. Hamilton, Mr. Madison, and Mr. Fitzsimmons, who made a report that demonstrated their flimsiness. Rhode Island was receiving goods free of duty in her ports, and many of them were then carried across the line into States whose ports were not free. Hence the objections.

Again, in April, 1783, Congress asked to be invested with certain powers for raising revenue and maintaining the public credit, for a term of fifteen years, as the temporary requisitions had not produced an adequate sum. They asked to be empowered to prohibit goods from being imported into or exported from any of the States in vessels belonging to or navigated by subjects of any power with whom the States have not formed treaties of commerce; and to prohibit the subjects of any foreign power from importing into the United States any goods that were not produced in the dominions of the sovereign whose subjects they were, with a proviso that all such acts must have the assent of nine States. In explanation of this the report said:

"Already has Great Britain adopted regulations destructive of our commerce with her West India Islands. There was reason to expect that measures so unequal and so little calculated to promote mercantile intercourse would not be persevered in by

an enlightened nation. But these measures are growing into system. It would be the duty of Congress, as it is their wish, to meet the attempts of Great Britain with similar restrictions on her commerce; but their powers on this head are not explicit, and the propositions made by the legislatures of the several States render it necessary to take the general sense of the Union on this subject. Unless the United States in Congress assembled shall be vested with powers competent to the protection of commerce, they can never command reciprocal advantages in trade; and, without these, our foreign commerce must decline and eventually be annihilated. Hence it is necessary that the States should be explicit, and fix on some effectual mode by which foreign commerce not founded on principles of equality may be restrained."

As the States had clung together for mutual protection when their lives and liberties were assailed, so now there was ground for hope that they would come into such closer union as might be necessary to protect themselves from a conspiracy against their commercial prosperity. But still the process was slow. In February, 1786, a committee to whom the answers of the States were referred reported to Congress that "seven States—New Hampshire, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, and South Carolina—have granted the impost in such manner that, if the other six States had made similar grants, the plan of the general

impost might immediately begin to operate; that two other States—Pennsylvania and Delaware—have also granted the impost, but have connected their grants with provisos which will suspend their operation until all the other States shall have passed laws in full conformity with the whole of the revenue system aforesaid; that two only of these nine States—Delaware and North Carolina—have fully acceded to that system in all its parts; and that the four other States —Rhode Island, New York, Maryland, and Georgia —have not decided in favor of any part of the system of revenue so long since and so repeatedly presented by Congress for their adoption."

It appeared that for eight years the requisitions of Congress had been so irregular in their operation, so uncertain in their collection, and altogether so unproductive as to prove them to be no reliance for the future. And this failure was dangerous to the peace and welfare of the Union. The faith of the Federal Government could not be maintained by temporary requisitions on the States. The purposes for which money was imperatively needed were, security of commerce against the depredations of the Barbary powers, protection of the frontier against Indians, establishment of magazines and arsenals in different parts of the country, and support of representatives abroad. The committee, therefore, emphatically declared that the crisis had arrived when the people

must decide whether they would support their rank as a nation, by maintaining the public faith at home and abroad, or hazard the very existence of the Union.

The States that did take action framed their measures so diversely that nothing practicable could result, and Congress passed resolutions asking some of them to reconsider their work and make the acts uniform.

Meanwhile, it was not Congress alone that saw the disadvantages of the situation. As early as July 21, 1782, the legislature of New York passed a series of resolutions that contained these passages:

"That it appears to this Legislature that the present British ministry, with a disposition not less hostile than that of their predecessors, taught by experience to avoid their errors, and assuming the appearance of moderation, are pursuing a scheme calculated to conciliate in Europe and seduce in America; that the economical arrangements they appear to be adopting are adapted to enlarging the credit of their government and multiplying its resources, at the same time that they serve to confirm the prepossessions and confidence of the people; and that the plan of a defensive war on this continent, while they direct all their attention and resources to the augmentation of their navy, is that which may be productive of consequences ultimately dangerous to the United States.

"That in the opinion of this Legislature the radical source of most of our embarrassments is the want of sufficient power in Congress to effectuate that ready and perfect cooperation of the different States on which their immediate safety and future happiness depend. That experience has demonstrated the Confederation to be defective in several essential points, particularly in not vesting the Federal Government either with a power of providing revenue for itself or with ascertained and productive funds, secured by a sanction so solemn and general as would inspire the fullest confidence in them and make them a substantial basis of credit. That these defects ought to be, without loss of time, repaired; the powers of Congress extended, a solid security established for the payment of debts already incurred and competent means provided for future credit and for supplying the future demands of war.

"That it appears to this Legislature that the aforegoing important ends can never be attained by partial deliberations of the States separately; but that it is essential to the common welfare that there should be, as soon as possible, a conference of the whole on the subject; and that it would be advisable for this purpose to propose to Congress to recommend, and to each State to adopt, the measure of assembling a convention of the States, specially authorized to revise and amend the Confederation, reserving a right

to the respective legislatures to ratify their determinations."

This is believed to be the earliest direct, official suggestion of the action that was taken four years later for revising the Articles of Confederation. Nearer in time and apparently more effective was Virginia's suggestion. On January 21, 1786, her House of Delegates adopted a resolution by which Edmund Randolph, James Madison, Jr., Walter Jones, Saint George Tucker, Meriwether Smith, David Ross, William Ronald, and George Mason were appointed commissioners to meet such commissioners as might be appointed by the other States in the Union, to consider the trade of the United States; how far a uniform system in their commercial regulations might be necessary to their common interest and their permanent harmony; and to report to the several States such an act as, when unanimously ratified, would enable Congress effectually to provide for such a system.

Four other States responded, and the meeting was held in Annapolis, Maryland, September 11, 1786. The delegates were: From New York, Alexander Hamilton and Egbert Benson; from New Jersey, Abraham Clarke, William C. Houston, and James Schureman; from Pennsylvania, Tench Coxe; from Delaware, George Read, John Dickinson, and Richard Bassett; from Virginia, Edmund Randolph,

James Madison, Jr., and Saint George Tucker. Mr. Dickinson was made chairman. The purpose for which the meeting had been called was discussed in all its aspects and a committee was appointed to prepare a report. This, after some discussion and amendment, was adopted unanimously. It set forth that commissioners were appointed from New Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom attended the meeting. But no appointments were made from Connecticut, Maryland, South Carolina, or Georgia. The twelve commissioners that met "did not conceive it advisable to proceed on the business of their mission under the circumstances of so partial and defective a representation." But as they were deeply impressed with the magnitude and importance of the object in view, they expressed their "earnest and unanimous wish that speedy measures may be taken to effect a general meeting of the States in a future convention for the same and such other purposes as the situation of public affairs may be found to require." To this declaration the commissioners added a most forcible argument for the adoption of their suggestion. Their study of the subject had brought them to the conclusion that the power of regulating trade was of so comprehensive extent, and would enter so far into the general system of the Federal Government, that to give it efficiency, and obviate doubts concerning its

precise nature and limits, might require a corresponding adjustment of other parts of the Federal system. The known defects of that system were many and serious, and the committee advised the calling of a convention of delegates from all the States for the purpose of investigating the subject thoroughly and devising a remedy.

This report was not only made to the legislatures of the States represented by the commissioners, but was formally laid before Congress.

CHAPTER IV

THE CONVENTION

AT last the general apathy was dispelled and Congress saw the necessity for doing something. A resolution was offered which declared that Congress "entirely coincided" with the commissioners "as to the inefficiency of the Federal Government and the necessity of devising such farther provisions as shall render the same adequate to the exigencies of the Union," and "strongly recommended to the legislatures to send delegates to the proposed convention."

The members from New York offered a resolution to that effect, except that it left the time and place of the convention blank. This appears to have been done because they wished it to be held in New York City. On this question, Massachusetts, New York and Virginia alone voted in the affirmative. The members from Massachusetts then offered a preamble and resolution, which, after some discussion, and amendment, were agreed to as follows:

"Whereas there is provision in the Articles of Con-

federation and perpetual Union, for making alterations therein, by the assent of a Congress of the United States, and of the legislatures of the several States; and whereas experience hath evinced that there are defects in the present Confederation, as a mean to remedy which several of the States, and particularly the State of New York, by express instructions to their delegates in Congress, have suggested a convention for the purposes expressed in the following resolution; and such convention appearing to be the most probable mean of establishing in these States a firm National Government:

"*Resolved*, That, in the opinion of Congress, it is expedient, that, on the second Monday in May next, a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress, and the several legislatures, such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of Government and the preservation of the Union."

Virginia was the first State to respond (October 16, 1786), and in her act authorizing the appointment of deputies she declared that the plan of a special convention was "preferable to a discussion of the subject in Congress, where it might be too much interrupted by the ordinary business before them, and where it would, besides, be deprived of the valuable counsels of sundry individuals who are dis-

qualified by the constitution or laws of particular States, or restrained by peculiar circumstances from a seat in that assembly." The other States followed with appointment of delegates, but Maryland and New Hampshire not till the Convention was in session—in May and June respectively. Rhode Island sent no delegates. Three States—Virginia, New Jersey, and North Carolina—included their Governors in the delegation, and Pennsylvania her President and the Speaker of the General Assembly. Patrick Henry, Governor of Virginia, declined the appointment, and when the Constitution was submitted to the States for ratification he opposed it. Richard Caswell, Governor of North Carolina, also declined to serve.

The delegates met in the State House in Philadelphia May 14, 1787, but not till May 25th were a majority of the States represented. George Washington was chosen chairman of the Convention, and William Jackson secretary.

The Convention sat with closed doors, and it employed no stenographic reporters. The delegates wished the people to know only the conclusions at which they should arrive, to see only the completed work—not the discussions, the differences, the criticisms, the rejected plans, and the compromises. And even when the work was done, they sought to hide the official journal of their proceedings, lest it should

furnish suggestions for arguments against the Constitution. We are indebted to James Madison for all that we know of the debates. He was present every day, occupied a front seat, took full notes in shorthand, and soon afterward wrote out his report.

The delegates spent about one hundred working days at their task, and made their final report September 17, 1787.*

The first difficulty that appeared was the question, how much power had been given to the Convention. The delegates were officially instructed to revise the Articles of Confederation, with a certain end in view. It appeared that this purpose could hardly be attained by a simple revision, and much less would such revision secure other ends that were quite as necessary for a federal government that should be complete enough to insure harmony between the States and strong enough to protect all. There was probably not one member of the Convention to whom this was not apparent; but many were still haunted by the fear of surrendering too much of the authority that now resided in the separate State governments. The Government as it existed under the Articles of

*Two anniversaries of that day are memorable in American history. Washington's Farewell Address to the people of the United States bears date September 17, 1796; and the bloodiest day on this continent, in a contest against which that address had uttered an emphatic warning, was September 17, 1862, at Antietam.

Confederation and Perpetual Union had no executive and no judiciary, and the Congress consisted of but one house. Even to this house the allotment of power was so niggardly that it could do but few things at all, and nothing with celerity.

Edmund Randolph, of Virginia, began the definite work of the Convention by introducing a series of resolutions declaring how the Articles of Confederation should be amended. A simple perusal of these will convince the reader that the idea of substituting a real federal government for the shadow of one had early taken possession of the minds of the delegates, however some of them might still be impressed with the necessity for restricting its powers. The specifications in Randolph's resolutions that ultimately were embodied, wholly or partly, in the Constitution as adopted were these:

That the right of suffrage in the national legislature ought to be proportioned to the quotas of contribution or to the number of free inhabitants.

That the national legislature ought to consist of two branches.

That the members of the first branch ought to be elected by the people for a specified term, to be of a certain age or over, to be liberally compensated, and to be meanwhile ineligible to any other office.

That each branch should possess the right of originating acts.

That there should be a national executive, and that he should receive a salary, which should not be increased or diminished during any term.

That a national judiciary should be established.

That provision should be made for admission of new States.

That the United States should guarantee a republican form of government to each State.

That provision ought to be made for amendments to the Constitution.

Charles Pinckney next submitted a draft of a Constitution that he had prepared. The features of this draft that ultimately were embodied, virtually if not exactly, in the Constitution as adopted were these:

Congress to consist of two houses. The members of the lower house to be elected by the people, the electors having the same qualifications required for voting for members of the State legislatures. Congressmen must have been citizens of the United States a certain number of years and have attained a certain age. All money bills must originate in the lower house. This house to have the power of impeachment.

Senators to be divided into three classes, so that only one-third shall go out of office at a time.

Congress to be the judge of the qualifications of its members.

Members of Congress not to be questioned else-

where for words spoken in debate, and to be exempt from arrest except for serious misdemeanor.

Both houses to keep journals of their proceedings, and publish them from time to time.

Neither house to adjourn without the consent of the other.

Members of Congress to be paid for their services.

The President to have the veto power, but a veto may be overridden by a two-third vote of each house. A bill not returned by him within a certain number of days to be a law without his signature, unless adjournment of Congress within that time prevents its return.

Congress shall have power: to regulate commerce, both foreign and internal; to borrow money, and emit bills of credit; to establish post-offices; to raise armies and build navies; to organize the militia; to coin money, and fix a standard of weights and measures; to establish post-roads; to make uniform laws of naturalization; to punish piracy and felonies at sea, counterfeiting, and infractions of the law of nations; to call for the militia to suppress insurrection, repel invasion, or execute the laws; to fix the punishment of treason, which shall consist only in levying war against the United States or adhering to their enemies.

Direct taxation must be in proportion to the num-

ber of inhabitants, and a census must be made at regular intervals.

No export duties can be levied.

No title of nobility can be granted.

The privilege of *habeas corpus* must not be suspended except in case of rebellion or invasion.

The executive power shall be vested in a President, who shall be reëligible, and he shall from time to time give Congress information of the state of the Union. He shall be commander-in-chief of the army and the navy, shall have the pardoning power except in cases of impeachment, and shall be liable to impeachment himself.

There shall be a Supreme Court, and Congress shall have power to create inferior tribunals. The judges of these courts shall hold office during good behavior.

Trials for criminal offences shall be by jury, and in the State where the offence was committed.

No State shall grant letters of marque or reprisal, or any title of nobility, or lay any impost on imports.

The citizens of each State shall be entitled to the privileges and immunities of citizens in the several States.

Full faith shall be given in each State to the acts and records of every other State.

New States may be admitted to the Union.

Provision shall be made for amendments to the Constitution.

Mr. Madison notes that the draft of Mr. Pinckney's plan is probably inaccurate in some respects. It was written out, partly or wholly, after the Constitution was adopted, and he thought that, by error of memory, a few of its features (minor ones, to be sure) were borrowed from the Constitution instead of contributing to it.

The proposal that Congress should consist of two houses was agreed to readily.

In the debates the first struggle was over the question of representation. The deputies from Delaware (the smallest State) had been instructed to refuse their assent to any change in the rule of suffrage that would deprive the State of its equal vote with all the other States. This proved to be one of the most serious difficulties encountered by the Convention. It was finally surmounted by means of one of the three compromises of the Constitution, as they are called. It was agreed that in the Senate every State should have equal representation with every other State; and so tenacious were the smaller States of this right that, while it was agreed to make the Constitution amendable by a vote of three-fourths of the States, it had to be stipulated that no State without its consent should be deprived of its equal representation in the Senate—which of course renders it

impossible ever to change the Constitution in that one respect.

On the proposal that members of the lower house be elected by the people there was considerable debate. Roger Sherman, of Connecticut, opposed it on the ground that the people, being uninformed and liable to be misled, should have as little as possible to do with the government.

Elbridge Gerry, of Massachusetts, also opposed it, declaring that we were already suffering from too much democracy, as the people were the dupes of pretended patriots. He said the maxims taken from the British Constitution were often fallacious when applied to our situation.

Mr. Madison argued that the popular election of one branch of the national legislature was essential to every plan of free government. He thought "the great fabric to be raised would be more durable if it should rest on the solid foundation of the people themselves than if it should stand merely on the pillars of the legislatures."

The next topic discussed was the question whether the second branch of the national legislature—that is, the Senate—should be chosen by the first branch —that is, the House of Representatives—from persons nominated by the State legislatures, or by the legislatures directly, or by the people. This led to a long debate, in which it appeared that the division

of sentiment was caused by fears on one side that the State governments would surrender too much power to Congress, and on the other that they would not surrender enough.

John Dickinson, of Delaware, made the longest speech. He argued that the three departments of the national government should be made as independent as possible. One source of stability was the double branch of the legislature, and the division of the country into distinct States formed the other principal source of stability. This division ought to be maintained, and considerable powers left with the States. Without this, and in case of a consolidation of the States into one great republic, we might read its fate in the history of smaller ones. A limited monarchy he considered *one* of the best governments in the world. It was not *certain* that the same blessings were derivable from any other form. But a limited monarchy was out of the question. He hoped that each State would retain an equal voice in at least one branch of the legislature.

James Wilson, of Pennsylvania, said the British government could not be our model, as we had no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people, were opposed to it. He did not see any danger of the States being devoured by the national government; on the contrary, he

wished to keep them from devouring it. He favored an election of senators by the people, in large districts, which he supposed would be most likely to obtain men of intelligence and uprightness.

Mr. Gerry argued that the commercial and moneyed interest would be more secure in the hands of the State legislatures than in those of the people at large. He said the people were for paper money, when the legislatures were against it. In Massachusetts the county conventions had declared a wish for a *depreciating* paper that would sink itself.

Charles Pinckney, of South Carolina, thought Senators should be chosen by the legislatures. He favored dividing the States into three classes, according to their respective sizes, and allowing to the first class three Senators, to the second class two, and to the third class one.

When the vote was taken, ten States of the twelve voted that Senators should be chosen by the State legislatures. This and the provision subsequently adopted, that no State without its consent should be deprived of equal representation in the Senate, constituted the most important of the three compromises in the Constitution as finally adopted.

Mr. Pinckney moved that the national legislature should have authority to negative all laws passed

by State legislatures which they should judge to be improper. It is an interesting fact that forty-five years later the State he represented attempted to enforce a rule the exact opposite of this and nullify a law of Congress that it considered improper. He argued that the States must be kept in due subordination.

Mr. Madison seconded the motion, and argued to the same effect, and declared that if no such precaution should be engrafted, the only remedy would be in an appeal to coercion. He then proceeded with an argument that becomes interesting in the light of later history. He reports himself as saying: "Was such a remedy eligible? Was it practicable? Could the national resources, if exerted to the utmost, enforce a national decree against Massachusetts abetted, perhaps, by several of her neighbors? It would not be possible. A small portion of the community, in a compact situation, acting on the defensive, and at one of its extremities, might at any time bid defiance to the national authority." How little the wisest man can know of the future! Article VI of the Constitution as adopted declares that it and the laws made in pursuance of it shall be the supreme law of the land, anything in the constitution or laws of any State notwithstanding. Yet a tremendous coercion became necessary and was successful.

The immediate question, of extending the negative power to all cases, was lost—three to seven.

The subject of duration of the senatorial term was sharply debated. Those delegates that considered themselves most democratic urged the plan of short terms and frequent elections. Those that laid more stress on stability of government desired a long term.

Mr. Madison reasoned that the government should be so constituted that one of its branches might have ample opportunity of acquiring a competent knowledge of the public interests. He said we could not be regarded, even at this time, as one homogeneous mass, in which everything that affects a part will affect in the same manner the whole. In framing a system that we wish to last for ages, we should not lose sight of the changes that ages will produce. An increase of population would of necessity increase the proportion of those who would labor under all the hardships of life and secretly sigh for a more equal distribution of its blessings. These might in time outnumber those who are placed above the feelings of indigence, and, according to the equal laws of suffrage, the power would slide into the hands of the former. No agrarian attempts had yet been made in this country; but symptoms of a levelling spirit had sufficiently appeared in certain quarters to give

notice of the future danger. For this reason, to prevent any sudden change in the whole government, he thought a considerable duration should be given to the senatorial term, and he favored nine years.

Mr. Gerry feared that the people, who were violently opposed to every form of monarchy, might look upon this as an approach to it. He thought the senatorial term should be four or five years.

Mr. Wilson said the true reason why Great Britain had not yet listened to a commercial treaty with us was, that she had no confidence in the stability or efficacy of our government. Nine years, with a rotation, would give these desirable qualities, and give our government an advantage in this respect over monarchy itself. In a monarchy much must always depend on the temper of the man. In such a body the personal character would be lost in the political.

On the question of the nine-year term, the vote showed three States in favor and eight against. On the question of six years, one-third to go out biennially, there were six in favor and four against.

The subject of paying members of Congress was then taken up. Charles Cotesworth Pinckney proposed that no salary be allowed to Senators. He said "the sen[illegible]nt to repre-

sent the wealth of the country, and therefore it ought to be composed of persons of wealth; and if no allowance were made, the wealthy alone would undertake the service."

Benjamin Franklin agreed with Mr. Pinckney, saying, "I wish the Convention to stand fair with the people. There are in it a number of young men who will probably be of the Senate. If lucrative appointments should be recommended, we might be chargeable with having carved out places for ourselves."

It was voted, all the States agreeing except South Carolina, to insert the words "to receive a compensation for the devotion of their time to the public service."

The rule of representation being considered, Luther Martin, of Maryland, spoke three hours one day, and continued the next day, arguing with equal vehemence and diffusiveness that the general government was meant merely to preserve the State governments, not to govern individuals; that the States could not give up an equality of votes without giving up their liberty; that if votes were according to population, Virginia, Massachusetts, and Pennsylvania could do as they pleased, unless there was a miraculous union of the other ten States. He feared for the liberties of the small States.

Hugh Williamson, of North Carolina, said the new States that might be expected at the West would be small States and would be likely to combine for the purpose of laying burdens on commerce and consumption that would fall with greatest weight on the old States.

Mr. Madison showed the improbability of the large States, which had diverse interests, combining against the others, and declared that thirty or forty million persons would not submit to be governed by a few thousands.

Mr. Sherman said that the question was not what rights naturally belong to men, but how they may be most equally and effectually guarded in society. And if some give up more than others in order to obtain this end, there can be no room for complaint. The rich man who enters into society along with the poor man gives up more than the poor man, yet with an equal vote he is equally safe.

At this point Benjamin Franklin made a brief speech, in which he said: "The small progress we have made after four or five weeks' close attendance and continual reasonings with each other—our different sentiments on almost every question, several of the last producing as many noes as ayes, is, methinks, a melancholy proof of the imperfection of the human understanding. We indeed seem

to feel our own want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of government, and examined the different forms of those republics which, having been formed with the seeds of their own dissolution, now no longer exist. And we have viewed modern States all round Europe, but find none of their constitutions suitable to our circumstances. In this situation of this assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings?" He moved that the daily sessions of the Convention be opened with prayer; but the motion did not prevail, chiefly for the reason that the Convention had no funds to pay a chaplain.

The delegates were evidently groping for and gradually approaching the great principle of the Constitution as finally adopted, that in which it differs from all that preceded it—"an indissoluble union of indestructible States"—and it was first formulated by Dr. William Samuel Johnson, of Connecticut, who declared that the controversy must be endless while gentlemen differed in the grounds of their arguments. Those on one side considered the States as districts of people compos-

ing one political society; those on the other considered them as so many political societies. The fact was, the States did exist as political societies, and a government was to be formed for them in their political capacity as well as for the individuals composing them. From this it seemed to follow that if the States as such were to exist they must be armed with some power of self-defence. Besides the aristocratic and other interests which ought to have the means of defending themselves, the States had their interests as such, and were equally entitled to like means. On the whole, as in some respects the States were to be considered in their political capacity, and in others as districts of individual citizens, the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined. In one branch of Congress the people ought to be represented, and in the other the States.

Nathaniel Gorham, of Massachusetts, thought the States as then confederated had no doubt a right to refuse to be consolidated or to be formed into any new system. But he wished the small States, which seemed most ready to object, to consider which are to give up most, they or the larger ones. A rupture of the Union would be an event unhappy for all; but surely the large States would be least unable to take care of themselves.

He considered that a union of the States was necessary to their happiness, and a firm general government was necessary to their union.

George Read, of Delaware, would have no objection to the system if it were truly national, but it had too much of a federal mixture in it. He wished for a good general government; but in order to obtain one the whole States must be incorporated. If the States remained, the representatives of the large ones would stick together and carry everything before them. These jealousies were inseparable from the scheme of leaving the States in existence, and they must be done away.

Alexander Hamilton, delegate from New York, made a long speech, in which he said: "It has been said that respectability in the eyes of foreign nations is not the object at which we aim; that the proper object of a republican government is domestic tranquility and happiness. This is an ideal distinction. No government could give us tranquility and happiness at home which did not possess sufficient stability and strength to make us respectable abroad. This is the critical moment for forming such a government. We should run every risk in trusting to future amendments. As yet we retain habits of union. We are weak, and sensible of our weakness. It is a miracle that we are now here exercising our tranquil and free

deliberations on the subject. It would be madness to trust to future miracles."

Mr. Gerry urged that we never were independent States, were not such now, and never could be, even on the principles of the Confederation. The States and the advocates for them were intoxicated with the idea of their sovereignty. He lamented that instead of coming there like a band of brothers, belonging to the same family, the delegates seemed to have brought with them the spirit of political negotiators.

The motion to make representation and suffrage in the House of Representatives proportional to population prevailed.

On the question of votes in the Senate there was a debate similar to that on the House, the point of difference still being the relative power of the States. One member had figured out the possibility of twenty-four ninetieths of the population controlling the whole people (in case of a vote by States), because seven small States might combine against six large ones.

Mr. Wilson gave the gist of his argument in these words: "Can we forget for whom we are forming a government? Is it for men, or for the imaginary beings called States? Will our honest constituents be satisfied with metaphysical distinctions? The rule of suffrage ought on every

principle to be the same in the second as in the first branch. If the government be not laid on this foundation it can be neither solid nor lasting."

On the other side, Oliver Ellsworth, of Connecticut, said Mr. Wilson's capital objection, that the minority would rule the majority, was not true. The power was given to the few to save them from being destroyed by the many. No salutary measure had been lost for want of a majority of the States to favor it. If security were all that the great States wished for, the first branch served them.

Mr. Madison, replying to Mr. Ellsworth, admitted that every peculiar interest, whether in any class of citizens or in any description of States, ought to be secured as far as possible. But he contended that the States were divided into different interests not by their difference in size, but by other circumstances, the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves. These two causes concurred in forming the great division of interests in the United States.

Many of the arguments were based on the assumption that the government was to be supported by direct taxes.

When the question of giving the States equal power in the Senate was put, the vote was a tie,

and after further debate the subject was referred to a committee of one from each State.

That committee recommended that in the House of Representatives each State be allowed one member for every forty thousand inhabitants; that money bills should originate in that house; and that in the Senate each State should have an equal vote. It was Franklin that brought the committee to this conclusion. But this did not end the debate, which was continued in much the same strain, except that some members were unwilling to vote on the report as a whole, and wished it divided.

Gouverneur Morris, of Pennsylvania, speaking against the report, said this country must be united, and if persuasion did not unite it the sword would. He begged that this consideration might have its due weight. The scenes of horror attending civil commotion could not be described, and the conclusion of them would be worse than the term of their continuance. How far foreign powers would be ready to take part in the confusions he would not say. There would be constant disputes and appeals to the States, which would undermine the general government. State attachments and State importance had been the bane of this country. He wished our ideas to be enlarged to the true interests of man, instead of being circumscribed

within the narrow compass of a particular spot. He objected to the scale of apportionment, and thought property should be taken into the estimate as well as the number of inhabitants.

A long debate on the question whether the privilege of originating money bills should be confined to the House of Representatives elicited no very satisfactory argument on either side. But Gouverneur Morris, resuming the subject of State rights, already so much discussed, swung off into an impassioned speech: "Among the many provisions that have been urged, I have seen none for supporting the dignity and splendor of the American Empire. It has been one of our greatest misfortunes that the great objects of the nation have been sacrificed constantly to local views; in like manner as the general interests of the States have been sacrificed to those of the counties. What is to be the check in the Senate? None—unless it be to keep the majority of the people from injuring particular States. But particular States ought to be injured for the sake of a majority of the people, in case their conduct shall deserve it. They were originally nothing more than colonial corporations; and now the small States demand greater rights as men than their fellow citizens of the large States. We must have an efficient government, and if there be efficiency in the local governments the former is impos-

sible. Germany alone proves it. Notwithstanding their common diet, there is no energy whatever in the general government. Whence does this proceed? From the energy of the local authorities; from its being considered of more consequence to support the Prince of Hesse than the happiness of the people of Germany. Do gentlemen wish this to be the case here? Good God, sir! is it possible they can so delude themselves? What if all the charters and constitutions of the States were thrown into the fire, and all their demagogues into the ocean? What would it be to the happiness of America? The case was the same in the Grecian States, and the United Netherlands are at this time torn in factions."

The special committee on the subject of proportional representation made a report assigning definite numbers of representatives to the several States—the highest number, nine, to Virginia, and the smallest, one, to Delaware—and recommending that Congress be authorized from time to time to increase the number, and make changes according to wealth and inhabitants.

Nathaniel Gorham, of Massachusetts, a member of the committee, explaining the report, said two objections prevailed against the rate of one member for every forty thousand inhabitants. The first was, that the representation would soon be too

numerous. The second was, that the Western States, which might have a different interest, might, if admitted on that principle, by degrees outvote the Atlantic States. Both these objections were removed. The number would be small at first, and might be kept so; and the Atlantic States, having the government in their own hands, could take care of their own interest by dealing out the right of representation in safe proportions to the Western States. These, he declared, were the views of the committee.

William Paterson, of New Jersey, made an argument on counting the slaves in the basis of representation. He said he could regard negro slaves in no light but as property. They were not free agents, and had no personal liberty, no faculty of acquiring property; on the contrary, they were themselves property, and, like other property, were entirely subject to the will of the master. He asked pointedly, "Has a man in Virginia a number of votes in proportion to the number of his slaves? And if negroes are not represented in the States to which they belong, why should they be represented in the general government? What is the true principle of representation? It is an expedient by which an assembly of certain individuals chosen by the people is substituted in place of the inconvenient meeting of the people themselves. If such

a meeting of the people were actually to take place, would the slaves vote? They would not. Why, then, should they be represented?" He added that he was also opposed to such an indirect encouragement of the slave trade, and said that Congress, in its act relating to the eighth Article of Confederation, had been ashamed to use the term "slaves" and had substituted a description.

Mr. Madison suggested that Mr. Paterson's doctrine of representation, which was correct in principle, must forever silence the pretensions of the small States to an equality of votes with the large ones.

Rufus King, of Massachusetts, said he had always expected that, as the Southern States were the richest, they would not league themselves with the Northern unless some respect were paid to their superior wealth. Eleven out of the thirteen States had agreed to consider slaves in the apportionment of taxation, and taxation and representation should go together.

The subject was referred to a committee of one from each State. The report of the committee distributed the sixty-five members of the first House of Representatives exactly as they were finally distributed on the adoption of the Constitution. But it was not adopted without considerable debate, in which the jealousy between North and South,

which afterward had such tragic results, was to a large extent apparent.

The question of a periodical census, to be taken at intervals fixed by act of Congress, was the subject of much discussion. Some delegates were in favor of leaving it to the discretion of Congress, while others believed that in that case Congress would do nothing at all, being unwilling to change its own numbers and apportionment. The logic of this debate is amusing. Several of the delegates persistently assumed that while the present Convention was honest and patriotic, a Congress that would be chosen from and represent the people in exactly the same way would probably be dishonest!

Again the foreboding of a clash of interests between the North and the South appeared in a debate on the subject of apportioning direct taxes according to the number of representatives in Congress from each State, until a census should be taken.

Mr. Madison said he had always conceived that the difference of interest in the United States lay, not between the large and the small States, but between the Northern and the Southern States, and as he found that the number of members allotted to the Northern States was greatly superior, he should prefer an addition of two members to the Southern States.

Gouverneur Morris thought that the distinction that had been set up and urged between Northern and Southern States was groundless; but he saw that it was persisted in, and that the Southern gentlemen would not be satisfied unless the way were open to their gaining a majority in the public councils. He foresaw that the consequence of such a transfer of power from the maritime to the interior and landed interest would be an oppression of commerce. There would be no end of demands for security, if every particular interest was to be entitled to it.

Pierce Butler, of South Carolina, said the security the Southern States wanted was that their negroes should not be taken from them, which some gentlemen, within or without doors, had a very good mind to do.

Mr. Wilson said the majority of people, wherever found, ought in all questions to govern the minority, and if the interior of the country should acquire this majority, they would not only have the right but would avail themselves of it whether we are willing or not.

Next day, Mr. Gerry called the attention of the Convention to the danger to be apprehended from Western States. He said he favored admitting them on liberal terms, "but not putting ourselves into their hands." If they acquired power, they

would, like all men, abuse it; they would oppress commerce and drain the wealth of the East into the Western country. To guard against this danger, he thought it necessary to limit the number of new States to be admitted to the Union in such manner that they should never outnumber the Atlantic States.

This argument, founded on an assumption of gross dishonesty in the great West, is at once astounding and amusing when we remember that it was put forth by the man whose name as the inventor is perpetuated in the most dishonest device in American politics—the man, moreover, that as Governor of Massachusetts there introduced the practice of wholesale dismissals from office for purely political reasons. Mr. Gerry was one of those members of the Convention that refused to sign the Constitution as finally framed; yet he accepted election to a seat in the first Congress under that Constitution.

In closing the debate, Caleb Strong, of Massachusetts, spoke in favor of giving the States an equal vote in the Senate, and Messrs. King, Madison, and Wilson spoke against it.

Mr. Madison thought the proper foundation of government would be destroyed unless the representation was proportional in both branches. He called for a single instance in which the general

government was to operate on the States as States, and not on the people individually. He repeated that the difference of interests was likely to lie between North and South, saying "the institution of slavery and its consequences form the line of discrimination," and he did not wish the eight States of the North forever to outvote the five States of the South. He assumed that the South would increase in population more rapidly than the North, and be able to take care of itself where representation was proportional.

Mr. Wilson thought the great fault of the existing Confederacy was its inactivity. It never had been a complaint against Congress that it governed overmuch, but that it had governed too little. To remedy this defect, the delegates were sent to this Convention, and the cure could not be effected by establishing an equality of votes. This very equality would carry them to the system which it was their duty to rectify. The small States, by virtue of such equality, might control the government, as they had controlled Congress.

Mr. Ellsworth asked Mr. Wilson whether he ever had seen a good measure fail in Congress for want of a majority of the States in its favor, and said he himself never had known such an instance. And he asked Mr. Madison whether a negative lodged with a majority of the States, even the

smallest, could be more dangerous than the qualified negative proposed to be lodged in a single executive magistrate, who must be taken from some one State.

When the vote was taken on the whole report, including equality of the States in the Senate, it was adopted. Connecticut, New Jersey, Delaware, Maryland, and North Carolina voted in favor; Pennsylvania, Virginia, South Carolina, and Georgia voted against it; Massachusetts was equally divided; New Hampshire and New York did not vote, as a majority of their delegates were absent.

The subject of a possible clashing between State laws and laws of the general government was debated, some delegates proposing that Congress should have the power to negative any State law, and others looking upon this as a dangerous power. But the debate was closed by the unanimous adoption of a resolution substantially identical with the second paragraph of Article VI of the Constitution as adopted.

It was voted unanimously that the national executive should consist of a single person; but as to the manner of choosing him there was division of opinion. Should he be chosen by Congress, or directly by the people? Should his term of office be seven years, or shorter? Should he be ineligible for a second term? These questions were debated with all sorts of fears and confident

prognostications of evils that would arise from one method or the other. The soundest argument —almost the only one that at this day appears to have had any force—was based on the desirability of securing the executive's independence of Congress on the principle that the three departments of government should be as distinct as possible.

Mr. King was disposed to think that the people at large would choose wisely, yet there was some difficulty because of the improbability of a general concurrence of the people in favor of any one man. He proposed an appointment by electors chosen by the people, as a plan liable to the fewest objections.

Mr. Paterson approved of this, and suggested that the electors be chosen by the States in a ratio that would allow one elector to the smallest States and three to the largest.

Mr. Gerry thought the electors should be chosen by the executives of the States.

It was voted that the national executive should be chosen by electors appointed by the State legislatures. It was also voted that he should not be ineligible for more than one term.

The question whether the executive should be subject to impeachment was debated at considerable length. The argument against it was, that as he did not hold his office for life, but for a short

term, in case of his malfeasance the people would put him out at the next election. The vote was in favor of impeachment, all Aye, except Massachusetts and South Carolina.

The appointment and pay of the Federal judges formed the subject of a long debate, which, like some of the others, was filled with anticipations of imaginary dangers; but it was generally agreed that the power of appointment should lie somewhere between the executive and the Senate. The final vote gave it to the Senate.

It was voted unanimously to give the executive the veto power, with the provision that bills might be passed over the veto by a two-thirds vote. But on a proposal to associate the judiciary with the executive in the revisionary power (that is, the exercise of the veto), a long discussion ensued. The decisive argument was presented by Luther Martin, who said: "As to the constitutionality of the laws, that point will come before the judges in their proper official character. In this character they have a negative on the laws. Join them with the executive in the revision, and they will have a double negative."

The proposal to join the judiciary in the veto power was voted down.

It was voted unanimously that all officers of the general government and the State governments

should be bound by oath to support the articles of Union.

With but little discussion it was agreed that the Senate should consist of two members from each State, and that they should vote individually.

The question as to the mode in which the chief magistrate should be chosen, and what should be his tenure of office, was resumed on July 24th, and appears from the debate to have been the most difficult with which the Convention had to deal. The proposals as to the length of the term (besides reëligibility or the reverse) included six years, seven years, twelve years, twenty years, and during good behavior. The proposals as to the mode included these: by Congress, by the State legislatures, by electors, by the Governors and Councils of the States, by the people at large. If he should be chosen by Congress, three modes were suggested: by general vote of both houses; by nomination of several candidates by the lower house, one of these to be chosen by the Senate; and by a committee of fifteen who should be chosen by lot and immediately be locked up like a jury till they should make a choice. If he should be chosen by electors, some thought these should be appointed by the legislatures, others that they should be elected by the people. It appeared to be assumed that in case the plan of electors were adopted, the entire

Electoral College must meet at the seat of the general government. If the choice were to be made by popular vote, it was proposed that every ballot should contain the names of either two or three candidates, only one of whom should be a resident of the same State as the voter.

By far the greater part of almost every speech in the long debate was given to the expression of elaborate fears concerning every mode except that which the speaker favored. Many of these will appear ludicrous to readers of the present day. Caleb Strong, of Massachusetts, considering the subject of reëligibility, gravely discussed the question whether, in case of a choice by Congress, gratitude for a past appointment would produce the same effect as dependence for a future appointment. He said also that electors would be objects of gratitude as well as legislators! Others discussed the question whether electors were likely to be men of the first or even the second grade of ability in their several States. Hugh Williamson, of North Carolina, thought they were not, and he said also: "An objection against a single magistrate is, that he will be an elective king and will feel the spirit of one. He will then spare no pains to keep himself in for life, and will then lay a train for the succession of his children." He thought it certain that we should have a king at some time, but he

wished to postpone that event as long as possible; hence, with ineligibility for a second term, he was willing to make the presidential term as long as twelve years. Some of the speakers were mainly desirous of so fixing the term that "the most eminent characters" would be willing to accept the office. Mr. Ellsworth thought they would not be willing to take it if they foresaw a necessary degradation at a fixed period—the degradation being ineligibility for a second term! Some had vague fears of the possibility of foreign influence and the executive being "in the pay of an enemy." Some thought that the power of impeachment would be a sufficient check on any wrong propensity of the chief magistrate, while others feared that this power might be abused to misplace a president merely to make way for some intriguing successor.

Gouverneur Morris held that the executive should be eligible for a second term, in order that the nation might have the benefit of his experience. "But," he said, "make him ineligible a second time, and prolong his duration even to fifteen years, will he, by any wonderful interposition of Providence, at that period cease to be a man? No, he will be unwilling to quit his exaltation; the road to his object through the Constitution will be shut; he will be in possession of the sword, a civil war will ensue, and the commander of the victorious

army, on whichever side, will be the despot of America."

Mr. Gerry predicted that if the election of the chief magistrate were entrusted to the people, the Society of the Cincinnati would control it, and others agreed with him. Several members argued that the people at large would not know who were the eminent men fit for that office, but Congressmen, or Governors, or Electors would To one of the suggested methods of election, Mr. Mason, of Virginia, objected that it would exclude every man who happened not to be popular in his own State, though the causes of his unpopularity might be of such a nature as to recommend him to the States at large.

If the eminent men that sat in that Convention had so poor opinions of the intelligence and integrity of their countrymen, we of the present day may well feel proud of the extent to which they have been proved erroneous. Only one eminent man that could have had the Presidency has ever refused it—General William T. Sherman. Of a score of Presidents elected to the office, three died soon after inauguration, and two others declared that they would not be candidates for reëlection—and kept their word. Of the remaining fifteen, nine were elected a second time. Not more than two have been supposed to aspire to a third term, and

neither of these obtained it. Only one has been made the subject of impeachment or threat of impeachment, and that one was a Vice-President that succeeded to the office on the death of the President. Though every President has been commander-in-chief of the army and the navy, not one has been suspected of any purpose to use them for his perpetuation in office; and any such attempt would be laughed at.

At the close of the debate the Convention passed a resolution providing that the executive consist of a single person, to be chosen by the national legislature for the term of seven years, to be ineligible a second time, and to receive a fixed compensation, to be paid out of the national treasury.

Perhaps the most serious struggle of all, as it might radically affect the whole character of the Constitution, was over the question of the form of ratification—whether the instrument should be the creation of the States as States, or of the whole people as one community. And here it is interesting to note certain wide differences of interpretation between some eminent members of the Convention and the public men that were their successors in their several States three-quarters of a century later.

Mr. Ellsworth, of Connecticut, moved that the Constitution be referred to the legislatures of the

several States for ratification; and Mr. Paterson, of New Jersey, seconded the motion.

Mr. Mason, of Virginia, opposed this, on the ground that a reference to the authority of the people was most important and essential. He declared that the legislatures had no power to ratify it, as they were mere creatures of the State constitutions, and could not be greater than their creators. He knew of no power in any of the constitutions that could be competent to this object. "Whither, then, must we resort? To the people, with whom all power remains that has not been given up in the constitutions derived from them." It was of great moment that this doctrine be cherished as the basis of free government. Another strong reason was that, admitting the legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding legislatures, having equal authority, could undo the acts of their predecessors; and the national government would stand, in each State, on the weak and tottering foundation of an act of assembly. He added, moreover, that in some of the States the governments were not derived from the clear and indisputable authority of the people. This, he said, was the case in Virginia, where some of the best and wisest citizens considered the constitution as established by an assumed authority.

Edmund Randolph, of Virginia, said: "One idea has pervaded all our proceedings, to wit, that opposition, as well from the States as from individuals, will be made to the system to be proposed. Will it not then be highly imprudent to furnish any unnecessary pretext by the mode of ratifying it? Added to other objections against a ratification by legislative authority only, it may be remarked that there have been instances in which the authority of the common law has been set up in particular States against that of the Confederation which has had no higher sanction than legislative ratification. Whose opposition will be most likely to be excited against the system? That of the local demagogues, who will be degraded by it from the importance they now hold. These will spare no efforts to impede that progress in the popular mind which will be necessary to the adoption of the plan, and which every member will find to have taken place in his own, if he will compare his present opinions with those brought with him into the Convention. It is of great importance, therefore, that the consideration of this subject should be transferred from the legislatures, where this class of men have their full influence, to a field in which their efforts can be less mischievous. It is, moreover, worthy of consideration that some of the States are averse to any change in their constitutions,

and will not take the requisite steps, unless expressly called upon to refer the question to the people."

Mr. Gerry considered that both the State governments and the Federal government had been too long acquiesced in to be now shaken, and the Confederation was paramount to any State constitution. The last article of it, authorizing alterations, must consequently be so as well as the others, and everything done in pursuance of that article must have the same high authority with the article. He feared that great confusion would result from a recurrence to the people, and they never would agree on anything.

Mr. Gorham thought that men chosen by the people for the particular purpose would discuss the subject more candidly than members of the Legislature, who were to lose the power that was given up to the general government. Some of the legislatures were composed of two branches, and in these cases it would be more difficult to get the plan through the legislature than through a convention. In some States many of the ablest men were excluded from the Legislature, but these might be elected to a convention. The legislatures would be interrupted with a variety of little business, by artfully pressing which designing men could find means to delay from year to year, if not to frustrate altogether, the national system. If the last article of

the Confederation was to be observed, the unanimous concurrence of the States would be necessary. But would any one say that all the States were to suffer themselves to be ruined if Rhode Island should persist in her opposition to general measures? Some other States also might tread in her steps. The advantage that New York seemed to be so much attached to, of taxing her neighbors by the regulations of her trade, made it very probable that she would be of the number. For these reasons, he considered that provision should be made for giving effect to the system without waiting for the unanimous concurrence of the States.

Mr. Gorham's apprehension concerning New York was well founded. Only by great special efforts was that State's ratification of the Constitution obtained, and then only by a vote of thirty to twenty-seven. His suggestion that final adoption should not depend on unanimity was the salvation of the whole scheme; yet it was revolutionary, for the Articles of Confederation were written as "perpetual," and could be amended only by unanimous vote of the States. But, for that matter, the entire proceeding of the Convention was revolutionary; for it was authorized simply to amend the Articles of Confederation, instead of which it framed a new Constitution.

Mr. Madison thought it clear that the legislatures

were incompetent to the proposed changes. These changes would make essential inroads on the State constitutions, and it would be a novel and dangerous doctrine that a legislature could change the constitution under which it held its existence. There might, indeed, be some constitutions within the Union which had given a power to the legislature to concur in alterations of the Federal compact. But there were certainly some which had not; and in the case of these a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the legislatures only and one founded on the people to be the true difference between a league or treaty and a constitution. The former, in point of moral obligation, might be as inviolable as the latter. In point of political operation there were two important distinctions in favor of the latter. 1. A law violating a treaty ratified by a preëxisting law might be respected by the judges as a law, though an unwise and perfidious one. A law violating a constitution established by the people themselves would be considered by the judges as null and void. 2. The doctrine laid down by the law of nations in the case of treaties is, that a breach of any one article by any of the parties frees the other parties from their engagements. In case of a union of people under one constitution, the nature of the

pact has always been understood to exclude such an interpretation. Comparing the two modes in point of expediency, he thought all the considerations that recommended this Convention in preference to Congress for proposing the reform were in favor of State conventions in preference to the legislatures for examining and adopting it.

The vote of the Convention on this question showed every State except Delaware in favor of ratification, after approbation by Congress, by assemblies chosen by the people.

A committee called the Committee of Detail was chosen by ballot to draw up a constitution in conformity with the resolutions passed by the Convention. This committee consisted of John Rutledge, of South Carolina; Edmund Randolph, of Virginia; Nathaniel Gorham, of Massachusetts; Oliver Ellsworth, of Connecticut; and James Wilson, of Pennsylvania. Of these five, two—Randolph and Ellsworth—did not sign the Constitution when it was completed and adopted by the Convention.

While this committee was at work, the Convention continued its deliberations on various subjects proposed as proper to be included in the Constitution. One of these related to the qualifications of members of Congress.

Mr. Mason moved that the Committee of Detail be instructed to insert a clause requiring qualifica-

tions of landed property and citizenship in the United States, and disqualifying any person that is indebted to the United States or has an unsettled account with it. His argument for this prohibition was that men frequently got into the State legislatures in order to shelter their delinquencies with the State governments.

This question, like all others that had been introduced, was considered on every side and debated freely. As usual, all sorts of fanciful theories were broached, most of them based on an assumption of general dishonesty; but John Dickinson, of Delaware, struck the core of the matter in a sentence or two that should have ended the discussion at once. He said: "The best defence lies in the freeholders who are to elect the legislators. While this source remains pure the public interest will be safe; if it ever should be corrupt, no little expedients will repel the danger." He added that he had always understood that a veneration for poverty and virtue was the object of republican encouragement, and he had doubted the wisdom of weaving into a republican constitution a veneration for wealth.

The resolution was voted down.

Another subject discussed was the location of the seat of the national government, the general opinion being that it should not be in the same city with the seat of any State government.

The Committee of Detail reported a formal draft of a constitution, a printed copy of which was furnished to each member of the Convention. Five weeks were spent in discussion and emendation of this draft; and other drafts were offered individually by Charles Pinckney and William Paterson, while Alexander Hamilton presented a memorandum or sketch for one.

The principal points in which the draft made by the Committee of Detail differed from the Constitution as finally adopted were these:

The preamble in the draft began with the words "We, the people of the States of [then followed the list of the thirteen], do ordain, declare, and establish the following Constitution." The Constitution as adopted begins, "We, the people of the United States, in order to form a more perfect Union," etc.

The draft required a Representative in Congress to have been a citizen of the United States three years. The Constitution makes it seven years.

The Constitution gives to the House of Representatives the sole power of originating bills for raising revenue. The draft gave it this power also for appropriations and fixing salaries.

The draft required a Senator to have been four years a citizen of the United States. The Constitution makes it nine years.

The draft gave Congress power to prescribe property qualifications for Senators and Representatives. Nothing of this appears in the Constitution.

By the draft, the members of Congress were to be paid by their States. By the Constitution, they are paid out of the national treasury.

The draft authorized Congress to appoint a Treasurer by ballot. Nothing of this appears in the Constitution.

The Constitution authorizes the enactment of copyright and patent laws. The draft did not.

The Constitution provides for the acceptance of a Federal District [the District of Columbia] to be exclusively under the control of the general Government. This was not in the draft.

The draft contained a long section making elaborate provision by which the Senate should have power to settle disputes between the States. This whole section was struck out.

The draft gave the election of the President to Congress, and made his term seven years, with ineligibility for a second term. The Constitution provides for an Electoral College, and a term of four years, with no restriction. The draft mentioned no qualifications for the President. The Constitution requires him to be a native of the United States (or a citizen at the time of the adoption

of the Constitution) and to have attained the age of thirty-five years.

The draft made no provision for a Vice-President. The Constitution provides for one, and makes him President of the Senate.

The Constitution provides for the writ of *habeas corpus*, and forbids the enactment of any *ex post facto* law. The draft did not mention these subjects.

The draft required a two-third vote in Congress for the admission of a new State. The Constitution does not.

The draft forbade prohibition of the slave trade (but not in those words); the Constitution permitted such prohibition after 1808. The Constitution provided for rendition of fugitive slaves; the draft did not.

According to the draft, all inhabitants were to be counted in the basis of representation in Congress. But by the Constitution only three-fifths of the slaves were to be counted.

Both the draft and the Constitution provided for amendments; but the Constitution forbids any amendment that will deprive any State of its equal representation in the Senate.

These changes were the result of the five weeks of discussion.

The first serious debate was on the subject of qualifications of electors of Representatives in

Congress. The principal speeches were made by Messrs. Dickinson, Gouverneur Morris, Mason, Madison, Franklin, and Mercer.

Mr. Dickinson considered that restriction of the right of suffrage to freeholders was "a necessary defence against the dangerous influence of those multitudes without property and without principle with which our country, like all others, will in time abound."

Gouverneur Morris said he had long learned not to be the dupe of words. The sound of aristocracy, therefore, had no effect on him. It was the thing, not the name, to which he was opposed; and one of his principal objections to the Constitution as now presented was, that it threatened the country with an aristocracy. The aristocracy, he thought, would grow out of the House of Representatives. Give the votes to men that had no property, and they would sell them to the rich. He predicted that the time was not distant when this country would abound with mechanics and manufacturers receiving their bread from their employers, and such men would not be the secure and faithful guardians of liberty, or be an impregnable barrier against aristocracy.

Mr. Mason believed that all felt too strongly the remains of ancient prejudices, and viewed things too much through a British medium. A freehold

was the qualification in England, and hence it was imagined that it must be the only proper one. The true idea, in his opinion, was that every man having evidence of attachment to and permanent common interest with the society, ought to share in all its rights and privileges, and this qualification certainly was not restricted to freeholders.

Mr. Madison said that a gradual abridgment of the right of suffrage was the mode in which aristocracies had been built on the ruins of popular forms. Whether the constitutional qualification ought to be a freehold would with him depend much on the probable reception that such a change would meet with in States where the right was now exercised by men of every description. In several of the States a freehold was the qualification. Viewing the subject in its merits alone, the freeholders of the country would be the safest depositories of republican liberty. The example of England, he said, had been misconceived, as only a very small proportion of the representatives there were chosen by freeholders.

Benjamin Franklin said: "It is of great consequence that we should not depress the virtue and public spirit of our common people, of which they displayed a great deal during the war, and this contributed principally to the favorable issue of it. American seamen who were carried in great num-

bers into the British prisons during the war, honorably refused to redeem themselves from misery, or to seek their fortunes, by entering and serving on board the ships of the enemies of their country. But British seamen made prisoners by the Americans readily entered on our ships if promised a share in the prizes that might be made out of their own country. This resulted from the different manner in which the common people are treated in America and in Great Britain. I do not think the elected have any right, in any case, to narrow the privileges of the electors. I am persuaded that such a restriction as is proposed would cause great uneasiness in the populous States. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised."

Mr. Mercer said he did not so much object to an election by the people at large, including such as were not freeholders, as to their being left to make their choice without any guidance. He suggested that candidates for Congress be nominated by the State legislatures.

The result of this debate was a unanimous vote to let the matter stand as in the draft, identical with the first paragraph of Article I, Section 2, of the Constitution.

The Convention next took up the subject that led to one of the three great compromises of the Con-

stitution—the method of counting inhabitants for the basis of representation in Congress. The clause in the draft that treated this subject made no distinction between freemen and slaves; while the clause that authorized the levying of direct taxes provided that they should be "regulated by the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to service for a term of years, and three-fifths of all other persons." The "all other persons" were the slaves. Thus on the assessment of taxes according to population, five slaves would count as three persons, but as a basis for representation in Congress they would count as five. But on a motion to make the rule the same in both cases (offered by Mr. Williamson, of North Carolina), nine States voted in favor of the change, New Jersey and Delaware voted against it, and New York did not vote.

The question then recurred on the adoption of the section as amended.

Mr. King made an impassioned speech on the subject. He said: "I wish to know what influence the vote just passed is meant to have on the succeeding part of the report, concerning the admission of slaves into the rule of representation. I cannot reconcile my mind to the article, if it is to prevent objections to the latter part. The admission of slaves is a most grating circumstance to my mind, and I believe

it will be so to a great part of the people of America. I have not made a strenuous opposition to it heretofore, because I hoped that this concession would produce a readiness, which has not been manifested, to strengthen the general government and to mark a full confidence in it. The report under consideration has, by the tenor of it, put an end to all these hopes. In two great points the hands of the legislature are absolutely tied. The importation of slaves cannot be prohibited, and exports cannot be taxed. Is this reasonable? What are the great objects of the general system?—defence against foreign invasion and against internal sedition. Shall all the States, then, be bound to defend each, and shall each be at liberty to introduce a weakness that will render defence more difficult? Shall one part of the United States be bound to defend another part, and that other part be at liberty not only to increase its own danger but to withhold the compensation for the burden? If slaves are to be imported, shall not the exports produced by their labor supply a revenue the better to enable the general government to defend their masters? There is so much inequality and unreasonableness in all this that the people of the Northern States can never be reconciled to it. No candid man can undertake to justify it to them. I have hoped that some accommodation would take place on this subject; that at least a time would have

been limited for the importation of slaves. I can never agree to let them be imported without limitation and then be represented in the national legislature. At all events, either slaves should not be represented, or exports should be taxable."

Evidently Mr. King did not anticipate that the border slave States would very soon ask to have the African slave trade prohibited.

Mr. Sherman said he regarded the slave trade as iniquitous; but as the point of representation had been settled after much difficulty and deliberation, he did not feel bound to make opposition, especially since the present article, as amended, did not preclude any arrangement whatever on that point in another place in the report.

Mr. Madison objected to the ratio of one representative to every forty thousand inhabitants as a perpetual rule. He said the future increase of population, if the Union should be permanent, would render the number of representatives excessive.

Mr. Gorham said it was not to be supposed that the government will last so long as to produce this effect. "Can it be supposed that this vast country, including the western territory, will remain one nation a hundred and fifty years hence?"

It is not strange that Mr. Gorham had little faith in the perpetuity of the nation. He saw plainly that there was an element of disintegration, which indeed

manifested itself in fierce warfare in just half the time that he mentioned. But he did not know that in the mean time steamboats, railways, and telegraphs were to be invented, the lakes and the Mississippi to become arteries of commerce, the great West to be explored and its riches prove a bond of union, Columbia River to be discovered, California to disclose its wonders, sowing and reaping machines to cultivate miles instead of acres on the vast fertile prairies, the population of the free States to increase in sufficient excess to prevent secession, and the whole people finally to realize that they have the grandest domain on the globe, boundless in its wealth and unique in its natural advantages.

It was voted to insert the words "not exceeding" before "one for every forty thousand," which left Congress at liberty to diminish the ratio as the population increased.

Gouverneur Morris then renewed the debate on the subject of slave representation. He moved to insert the word "free" before "inhabitants," and said he never would concur in upholding domestic slavery. "It is a nefarious institution, the curse of Heaven on the States where it prevails. Compare the free regions of the Middle States, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty that overspread the barren wastes of Virginia, Maryland,

and the other States having slaves. Travel through the whole continent, and you behold the prospect continually varying with the appearance and disappearance of slavery. The moment you leave the Eastern States and enter New York the effects of the institution become visible. Passing through the Jerseys and entering Pennsylvania, every criterion of superior improvement witnesses the change. Proceed southwardly, and every step you take through the great regions of slaves presents a desert increasing with the increasing proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens, and let them vote. Are they property? Why, then, is no other property included? The houses in this city are worth more than all the wretched slaves that cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this: that the inhabitant of Georgia or South Carolina who goes to the coast of Africa and, in defiance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connections and damns them to the most cruel bondage, shall have more votes in a government instituted for protection of the rights of mankind than the citizen of Pennsylvania or New Jersey who views with a laudable horror so nefarious a prac-

tice. Domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. And what is the proposed compensation to the Northern States for a sacrifice of every principle of right, every impulse of humanity? They are to bind themselves to march their militia for the defence of the Southern States—for their defence against those very slaves of whom they complain. They must supply vessels and seamen, in case of foreign attack. The legislature will have indefinite power to tax them by excises and duties on imports, both of which will fall heavier on them than on the Southern inhabitants; for the bohea tea used by a Northern freeman will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side, the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack and the difficulty of defence. Nay, they are to be encouraged to it by an assurance of having their votes in the national government increased in proportion, and are at the same time to have their exports and their slaves exempt from all contributions for the public service. Let it not be said that direct taxation is to be proportioned to representation. It is idle to suppose that the general government can stretch its

hand directly into the pockets of the people scattered over so vast a country. It can only do it through the medium of exports, imports, and excises. For what, then, are all these sacrifices to be made? I would sooner submit myself to a tax for paying for all the negroes in the United States than saddle posterity with such a constitution."

Mr. Pinckney said he considered the fisheries and the western frontier as more burdensome to the United States than the slaves, and he thought this could be demonstrated if it were a proper occasion.

If any Southern delegate made a more extended answer to the speeches of Messrs. King and Morris, Mr. Madison failed to note it.

On the question of inserting the word "free" before "inhabitants," New Jersey alone voted in favor, against ten States in the negative.

The subject of giving the House of Representatives the sole power of originating bills to raise revenue or make appropriations was debated again, and the vote was in favor of removing this restriction, seven to four. But a reconsideration was voted, and several days later the subject was discussed at great length, some of the arguments being founded on a confident assumption of reckless dishonesty in the Senate.

On the question of the length of residence in the United States required for a Senator there was a

long debate, several delegates expressing apprehension that freshly arrived foreigners might be elected to the Senate, and there use their power to favor their native country. After successive votes on fourteen, thirteen, and ten years, an agreement was reached on nine years.

The question of a property qualification for members of Congress was taken up, and Mr. Pinckney wished to have the sum fixed by the Constitution, not left to Congress. He said he was opposed to the establishment of an undue aristocratic influence in the Constitution, but he thought it essential that the members of the legislature, the executive, and the judges should be possessed of competent property to make them independent and respectable. Were he to fix the quantum of property that should be required, he should not think of less than one hundred thousand dollars for the President, half that sum for each of the judges, and in like proportion for members of the national legislature. But he would leave the sums blank. He moved that the President, the judges and members of the legislature should be required to swear that they were respectively possessed of a clear unencumbered estate to the amount of ———.

Mr. Rutledge said the Committee had reported no qualifications, because they could not agree on any among themselves.

Mr. Ellsworth suggested that the different circumstances of different parts of the country, and the probable difference between present and future circumstances, made it improper to have either uniform or fixed qualifications.

Dr. Franklin said he disliked everything that tended to debase the spirit of the common people. If honesty was often the companion of wealth, and if poverty was exposed to peculiar temptation, it was not less true that the possession of property increased the desire for more property. "Some of the greatest rogues I was ever acquainted with were the richest rogues. We should remember the character which the Scripture requires in rulers—that they should be men hating covetousness. This Constitution will be much read and attended to in Europe; and if it should betray a great partiality to the rich, it will not only hurt us in the esteem of the most liberal and enlightened men there, but discourage the common people from removing to this country."

Mr. Pinckney's motion was then incontinently voted down; and after further debate the whole section relating to a property qualification for members of Congress was struck out. A long debate on the question of length of residence as a qualification for Representatives in Congress preceded the final vote that fixed it at seven years. As in other cases, the speeches abounded in expressions of fear as to

what foreign-born citizens might do if they obtained seats in Congress. Mr. Wilson reminded the delegates that at least three of their number—Robert Morris, Mr. Fitzsimmons, and himself—were not natives.

And there was another long debate on the section providing that members of Congress may not hold any other office during the term for which they are elected, followed by one on restricting the power of Congress in the passing of bills. One proposal was that the Supreme Court should be joined with the President in exercising the veto power. Another was, to extend the veto power to resolutions as well as bills. And still another made the vote required for overriding a veto three-fourths of each house. The last two were carried. But later this was changed.

There was a struggle over the question of permitting Congress to tax exports, and another concerning the power to emit bills of credit. The former appeared to be a matter of local interests, the latter of individual views concerning the policy of issuing paper money in any case. Both proposals were rejected.

On the subject of empowering the general government to suppress insurrection in any State—whether with or without application for assistance from the State government—there was a sharp division of

opinion, the spirit of which may be indicated by two brief quotations. Mr. Gerry said he was "against letting loose the myrmidons of the United States against a State without its own consent," and Gouverneur Morris said: "We are acting a very strange part. We first form a strong man to protect us, and at the same time wish to tie his hands behind him. The legislature [Congress] may surely be trusted with such a power to preserve the public tranquility."

Still another discussion ensued on the question of fixing the authority to make war and peace—whether it should be lodged with the President alone, or with the Senate, or with both houses of Congress. And the ludicrous assumption of dishonesty and stupidity in the Senate was exhibited once more when Mr. Gerry, seconding a motion to give the whole of Congress the responsibility for treaties of peace, said: "Eight senators may possibly exercise the power if it is vested in that body (or fourteen, if all should be present), and consequently give up part of the United States. The Senate is more liable to be corrupted by an enemy than the whole legislature."

The only instance in which a part of the United States can be said to have been given up was the action in 1846, when the Senate, by a vote of forty-one to fourteen, accepted the so-called compromise offer of the British Government, to fix the northwest

boundary-line at the parallel of 49°, instead of at 54° 40′, which the party represented by the Polk Administration had promised to insist upon at all hazards. This gave Great Britain Vancouver Island and half the harbors of Puget Sound, and created the gap that now exists between the State of Washington and the southern point of Alaska, through which gap Canada reaches the Pacific with her railway. And in that action the Senate was influenced, not by any foreign corruption fund, but by pressure of supposed sectional interest.

Mr. Madison and Charles Pinckney proposed a long list of minor powers to be conferred on Congress. Some of these were adopted, and others were rejected on the ground that no special clause was necessary for them. The more important ones that were rejected were, for establishing a university, for granting charters of incorporation, and to restrain Congress from establishing a perpetual revenue. The most important of those that were adopted (proposed by Mr. Pinckney) was that for securing the privilege of *habeas corpus*. A motion to enable Congress to enact sumptuary laws—with the argument that "No government can be maintained unless the manners be made consonant to it"—was voted down by eight to two.

The section concerning treason—which in the draft presented by the Committee was substantially

the same as in the Constitution when adopted—was the subject of much debate. Some of the delegates thought there might be treason against a separate State, as well as against the Union; while others held that the only sovereignty was in the Union, and therefore any treason would be against that. Gouverneur Morris suggested that in case of a contest between the United States and a particular State, the people of the State must be traitors to one or the other authority. He probably did not dream that such a contingency would ever really occur.

The question of permitting Congress to tax exports was the subject of a strong and determined contention. The Southern States (which some of their delegates designated as the "staple States") opposed any such tax, on the ground that it would bear with unequal weight on them. Mr. Mason said he depended on the principle that a majority when interested will oppress the minority, and he bore in mind the fact that the Northern States were to have more representatives in Congress than the Southern States. Several delegates discussed the question almost solely with a view to the desirability of such power in case an embargo became advisable. The only important embargo we have had was that recommended by President Jefferson in 1807, which was intended to counteract the British orders in council and Napoleon's Berlin and Milan decrees.

A power to tax exports was not necessary for that. It has been suggested in recent times that a war between the United States and Great Britain is now practically impossible, because an American embargo on foodstuffs would bring England to terms at once.

The section providing that the importation of slaves should be neither taxed nor prohibited gave rise to a very earnest discussion.

Mr. Martin, of Maryland, wished to permit taxation or prohibition of the traffic, saying that it was inconsistent with the principles of the Revolution and dishonorable to the American character to have such a feature in the Constitution.

Mr. Rutledge, of South Carolina, declared that religion and humanity had nothing to do with this question; interest alone was the governing principle with nations. The true question at present was, whether the Southern States should or should not be parties to the Union. And if the Northern States consulted their interest, they would not oppose the increase of slaves, which would increase the commodities of which they would become the carriers.

Mr. Ellsworth, of Connecticut, favored letting every State import what it pleased, on the ground that the morality and wisdom of slavery were considerations belonging to the States themselves.

Charles Pinckney said that South Carolina could

never receive the plan if it prohibited the slave trade. In every proposed extension of the powers of Congress that State had expressly and watchfully excepted that of meddling with the importation of negroes.

Mr. Sherman said he disapproved of the slave trade; but as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the clause as it stood.

Mr. Mason, of Virginia, said: "This infernal traffic originated in the avarice of British merchants. The British Government constantly checked the attempts of Virginia to put a stop to it. The present question concerns, not the importing States alone, but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did by the Tories. Maryland and Virginia have already prohibited the importation of slaves expressly, and North Carolina has done the same in substance. All this will be vain if South Carolina and Georgia shall be at liberty to import. Slavery discourages arts and manufactures. The poor despise labor when it is performed by slaves. They produce the

most pernicious effect on manners. Every master of slaves is born a petty tyrant, and they bring the judgment of heaven on a country. As to the States being in possession of the right to import, that is the case with many other rights that are now to be properly given up."

Charles C. Pinckney declared it to be his firm opinion that if he and all his colleagues were to sign the Constitution and use their personal influence, it would be of no avail toward obtaining the assent of their constituents. South Carolina and Georgia, he declared, could not do without slaves. As to Virginia, she would gain by stopping the importations; for her slaves would rise in value, and she had more than she wanted. He admitted that slaves should be subject to duty, like other imports, but he should consider a rejection of the clause as an exclusion of South Carolina from the Union.

Mr. Dickinson considered it inadmissible on every principle of honor and safety that the importation of slaves should be authorized to the States by the Constitution. He could not believe that the Southern States would refuse to confederate on the account apprehended, especially as the power was not likely to be immediately exercised by the general government.

Mr. Williamson said the law of North Carolina did not directly prohibit the importation of slaves.

It imposed a duty of five pounds sterling on each slave imported from Africa, ten pounds on each one from elsewhere, and fifty pounds on each one from a State that licensed manumission.

Mr. Rutledge declared that if the Convention thought North Carolina and South Carolina and Georgia would ever agree to the plan unless their right to import slaves were untouched, the expectation was vain, for the people of those States never would be such fools as to give up so important an interest.

The debate ended with a reference of the subject to a committee, and two days later that committee reported the section as it now stands in the Constitution. Thus was effected the last of the three compromises.

The section concerning the organization and control of the militia led to a long and tangled debate, in which all sorts of improbable results were confidently anticipated, on the one side or the other. Mr. Randolph struck the common sense of it when he asked what danger there could be that the militia could be brought into the field to commit suicide, reminding the Convention that the militia power, from its nature, could not be abused unless the whole mass of citizens should be corrupted.

But Mr. Gerry still feared that too much power was to be placed in the hands of the general govern-

ment, even when it was stipulated that the appointment of all officers of the militia should be reserved to the States. He said, a little petulantly: "Let us at once destroy the State governments, have an executive for life or hereditary, and a proper Senate, and then there will be some consistency in giving full powers to the general government. But as the States are not to be abolished, I wonder at the attempts that are made to give powers inconsistent with their existence. I warn the Convention against pushing the experiment too far. Some people will support a plan of vigorous government at every risk. Others of a more democratic cast will oppose it with equal determination. And a civil war may be produced by the conflict."

Here he anticipated the theory of later publicists who have divided parties into strict constructionists and loose constructionists. This theory holds to a certain extent in abstract discussions. But it is notable that any party, when in possession of the Federal Government, is for the time being a loose constructionist, exercising all the power that any reasonable interpretation of the Constitution will admit. Mr. Gerry's apprehension of civil war was only one of several instances in which that idea cropped out in the course of the debates. And indeed the persistent stickling for State privileges and local advantages made it not unreasonable. The civil

war did come, for that very reason, and was on a more gigantic scale, and more radical in its results, than any member of the Convention imagined.

Mr. Madison said that as the greatest danger was that of disunion of the States, it was necessary to guard against it by giving sufficient powers to the common government; and as the greatest danger to liberty was from large standing armies, it was best to prevent them by an effectual provision for a good militia.

The mode of electing the President was next considered, and the usual variety of opinions appeared. At first it was assumed that he must necessarily be chosen by Congress, and the question whether the election should be by joint ballot or by separate action of the two houses brought out again the consideration of the relative power of the large States as against the small ones.

Gouverneur Morris, urging the necessity of making the President entirely independent of Congress, and expressing the worst fears as to the corruptibility of that body, again proposed the plan of electors to be chosen by the people. This was voted down at first —six to five—but finally it was adopted.

The clause declaring that the new government should assume the debts of the old was discussed at considerable length, but mainly on the question

whether the clause was not unnecessary, such assumption following as a matter of course.

The tenure and jurisdiction of the Supreme Court were carefully considered. As to tenure, there was repetition of the principle of making the three departments of the government as independent as possible. As to the power of the Court to expound the Constitution, Mr. Madison remarks, in his report, that it was generally supposed that the jurisdiction given was constructively limited to cases of a judiciary nature.

The section concerning the privilege of *habeas corpus*, as it stands in the Constitution, was inserted on motion of Gouverneur Morris, except that his version used the word "where" instead of "when," which might make a material difference.

The subject of navigation acts was resumed, on the question whether a two-third vote should be required for their passage.

Charles Pinckney advocated the two-third rule. He said there were five distinct commercial interests: The fisheries and the West India trade belonged to the New England States; the interests of New York lay in a free trade; wheat and flour were the staples of the two middle States; tobacco was the staple of Maryland and Virginia, and partly of North Carolina; rice and indigo were the staples of South Carolina and Georgia. It is noticeable that

cotton was not mentioned. That crop did not rise to great importance till Eli Whitney invented the cotton-gin in 1793. Mr. Pinckney said these different interests would be a source of oppressive regulations unless there was a check to the passage of bills by a bare majority; and the power of regulating commerce was a pure concession on the part of the Southern States.

His colleague, Charles C. Pinckney, said that it was the true interest of the Southern States to have no regulation of commerce. But, considering the loss brought on the commerce of the Eastern States by the Revolution, their liberal conduct toward the views of South Carolina on the slave trade, and the interest that the weak Southern States had in being united with the strong Eastern States, he thought it was proper that no fetters should be imposed on the power of making commercial regulations, and he believed his constituents, though prejudiced against the Eastern States, would be reconciled to such liberality. "I myself had prejudices against the Eastern States before I came here, but will acknowledge that I have found them as liberal and candid as any men whatever."

There may have been other instances of such frank acknowledgment in the course of the debates, but Mr. Madison has not recorded them; though the forms of courtesy were seldom transgressed.

There was a general understanding that navigation laws and importation of slaves should offset each other as the third compromise. Yet a few of the delegates insisted on discussing the subject at length. Mr. Madison made an elaborate speech, arguing that there should be no special restriction on the passage of navigation acts, and that such acts, though temporarily detrimental to the interest of the South, would ultimately advance it. When the vote was taken it was unanimous against any restriction.

The section providing for the admission of new States gave rise to a long debate. The chief considerations urged were, the danger that new States at the West might become populous enough to outvote the East; that States might be divided without their consent, or not divided when they should be; and that there might be special trouble in the case of Vermont, which was claimed by New York. Various forms were proposed for the article, and the one finally adopted was proposed by Gouverneur Morris and Mr. Dickinson.

The section making members of Congress ineligible to other offices during their term was brought to a satisfactory form only after much debate. Some thought that a seat in Congress might be used only as a means of obtaining a lucrative office. Others reasoned that when an important office was to be filled,

the best men—meaning Congressmen—should not be debarred from it.

The elaborated sections concerning the manner of choosing the President, and his powers, when reported from the committee, were earnestly debated. Mr. Wilson thought that, as this subject had divided the house, it would also divide the people, and that it was, in truth, the most difficult of all on which they had to decide. He said the plan of choosing a President by electors got rid of one great evil, that of cabal and corruption; and continental characters would multiply as the people coalesced, so that the electors in every part of the country could know and judge of them. "Continental characters" was his term for men whose reputation extended beyond the limits of their own State.

It was assumed that members of the Electoral College would express their individual preferences in their votes, and some of the delegates feared that the Electors would not know who were the fittest and most eminent men in the country, and hence the votes would be scattered and the choice be thrown upon Congress. They did not dream that the time would come when the business would all be arranged by conventions of political parties, and the Electors be merely clerks to register the convention's will.

Every imaginable amendment was offered, and nearly all were voted down. Much time and talk

were spent on the proposal to give the choice of President to the Senate in case the Electoral College failed to give a majority to any candidate. The objectors to this based their arguments mainly on the supposed danger of establishing an aristocracy if the President should be the creature of the Senate, or if the two should work together. The section as finally agreed to and incorporated in the Constitution was changed by the Twelfth Amendment in 1804.

To the proposal that the Vice-President be President of the Senate Mr. Gerry objected, declaring that they might as well put the President himself at the head of the legislature, for the close intimacy that must subsist between the President and the Vice-President made it absolutely improper. Herein Mr. Gerry was not so foreseeing as Gouverneur Morris, who at once replied: "The Vice-President, then, will be the first heir apparent that ever loved his father." Several delegates thought there was no need of having a Vice-President at all.

The proposal that a council be provided for the President, to consist of six members—two from the Eastern, two from the Middle, and two from the Southern States—was supported by several delegates, including Dr. Franklin, and was referred to the Committee of the States; but that Committee rejected it. The President's Cabinet, as now constituted, which serves the same purpose as the proposed

council, is not provided for in the Constitution, but is remotely hinted at in the clause providing that "he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices." Nor are the departments themselves provided for in the Constitution, or even mentioned except in the passage just quoted.

The question, where the treaty-making power should be lodged, proved to be very troublesome. Some thought a treaty of peace should be differentiated from others; and, of these, some held that it should require fewer votes for confirmation, and some that it should require more; and on each side ingenious arguments were offered.

The method of impeachment of a President was agreed upon with little debate.

The method of making amendments to the Constitution was agreed to after some discussion, as was also the method of ratification.

Then a committee was chosen by ballot to revise the style and arrange the articles agreed on by the Convention. This committee consisted of William Samuel Johnson, Alexander Hamilton, Gouverneur Morris, James Madison, and Rufus King.

On September 12, Dr. Johnson, Chairman of the Committee on Style and Arrangement, reported a

digest of the plan, printed copies of which were furnished to the delegates.

A few more changes were made before it was finally accepted. The vote necessary to override the President's veto was changed from three-fourths to two-thirds. The clause that forbids the requirement of any religious test as a qualification for office was added. The basis of representation was changed from forty thousand to thirty thousand. There was much debate over the provision for amendments, but no change resulted. Several amendments and additions were proposed, debated, and voted down. Among these was one offered by Dr. Franklin, which proposed to give Congress "power to provide for cutting canals where deemed necessary." Mr. Sherman objected to this, because the expense in such cases would fall on the United States, and the benefit accrue to the places where the canals should be cut. Mr. Madison favored the suggestion, on the ground that as the political obstacles between the States had now been removed, the natural obstacles also should be removed.

The only instance in which General Washington took part in the discussion was when he spoke in favor of reducing the basis of representation from forty thousand to thirty thousand.

Three members who had been most active in the proceedings of the Convention—Edmund Randolph

and George Mason of Virginia, and Elbridge Gerry of Massachusetts—announced that they could not sign the Constitution as adopted, and gave their reasons.

Mr. Randolph said he could not sign it unless a clause were added providing that amendments might be offered by State conventions, to be submitted to and finally decided by another general convention. He thought that indefinite and dangerous powers had been given to Congress.

Mr. Mason gave the same reason, and confidently predicted that the experiment would end either in monarchy or in a tyrannical aristocracy. He said a second convention would know more of the sense of the people; and without that he would neither sign the Constitution here nor give it his support in Virginia.

Mr. Gerry gave his reasons for not signing categorically in this form: 1. The duration and reëligibility of the Senate. 2. The power of the House of Representatives to conceal their journals. 3. The power of Congress over the places of election. 4. The unlimited power of Congress over their own compensations. 5. Massachusetts has not a due share of representatives allotted to her. 6. Three-fifths of the blacks are to be represented as if they were freemen. 7. Under the power over commerce, monopolies may be established. 8. The Vice-Presi-

dent is made head of the Senate. But he said he could get over all these, if the rights of the citizens had not been rendered insecure—1, by the general power of Congress to make such laws as they may please to call necessary and proper; 2, to raise armies and money without limit; 3, to establish a tribunal without juries, which will be a Star Chamber as to civil cases. For these reasons, he thought there should be a second general convention.

On the question of authorizing another convention, all the States voted No.

On the question of agreeing to the Constitution as now amended, all the States voted Aye.

The order was then given for the Constitution to be engrossed. The next day (September 17), when the engrossed copy had been read, Dr. Franklin offered a written speech, which Mr. Wilson read for him. Franklin was in his eighty-second year, and was too feeble to deliver a long address. The following is the full text of the speech, which may be considered the last of that eminent man's many services to his country and to mankind. It probably had much influence in preventing other delegates from following the example of Messrs. Randolph, Mason, and Gerry.

"MR. PRESIDENT: I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve

them. For, having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele, a Protestant, in a dedication tells the Pope that the only difference between our churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong. But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady who, in a dispute with her sister, said, "I don't know how it happens, sister, but I meet with nobody but myself that's always in the right"—*Il n'y a que moi qui a toujours raison.*

"In these sentiments, sir, I agree to this Constitution with all its faults, if they are such; because I think a general government necessary for us, and there is no form of government but may be a blessing to the people if well administered, and believe farther that this is likely to be well administered for a course

of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, whether any other convention we can obtain may be able to make a better constitution. For when you assemble a number of men, to have the advantage of their joint wisdom, you inevitably assemble, with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our counsels are confounded like those of the builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, sir, to this Constitution because I expect no better, and because I am not sure that it is not the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us, in returning to our constituents, were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and

thereby lose all the salutary effects and great advantages resulting naturally in our favor, among foreign nations as well as among ourselves, from our real or apparent unanimity. Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion, on the general opinion of the goodness of the government, as well as of the wisdom and integrity of its governors. I hope, therefore, that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the conventions) wherever our influence may extend, and turn our future endeavors to the means of having it well administered. On the whole, sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion, doubt a little of his own infallibility, and, to make manifest our unanimity, put his name to this instrument."

Mr. Randolph apologized for his refusal to sign, saying he did not mean that he would oppose the Constitution elsewhere. But he thought the object of the Convention would be frustrated by the alternative that it presented to the people—this form or nothing.

Gouverneur Morris said he, too, had objections. But as he considered the present plan the best that

was to be attained, he should take it with all its faults. The majority had determined in its favor, and by that determination he should abide.

Mr. Hamilton said he was anxious that every member should sign. A few characters of consequence, by opposing or even refusing to sign the Constitution, might do infinite mischief. No man's ideas were more remote from the plan than his own were known to be. But it was not possible to deliberate between anarchy and convulsion on one side and the chance of good to be expected from the plan on the other.

Mr. Gerry further explained that while the plan was pending he had treated it with all the freedom he thought it deserved; but he now felt himself bound, as he was disposed, to treat it with the respect due to an act of the Convention. He hoped he should not violate that respect in declaring his fears that a civil war might result from the present crisis in the United States. The refusals to sign should never be known from him.

To obviate the objections of some delegates to signing as individuals, Dr. Franklin suggested that the Constitution be signed as "Done in Convention, by the unanimous consent of the States present the 17th of September," etc., and this was the form adopted.

It was voted that the journals and other papers of the Convention be deposited with its President.

While the members were signing, Dr. Franklin, looking at the President's chair, at the back of which a sun was painted, said to those who stood near him: "Painters have found it difficult to distinguish in their art a rising from a setting sun. I have often and often, in the course of the session and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether is was rising or setting. But now at length I have the happiness to know that it is a rising and not a setting sun."

The engrossed draft of the Constitution was submitted to Congress, with these resolutions, which had been adopted unanimously by the Convention:

Resolved, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this convention that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention, assenting to and ratifying the same, should give notice thereof, to the United States in Congress assembled.

Resolved, That it is the opinion of this convention, that as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President,

and the time and place for commencing proceedings under this Constitution. That after such publication the electors should be appointed, and the Senators and Representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a president of the Senate, for the sole purpose of receiving, opening, and counting the votes for President; and that, after he shall be chosen, the Congress, together with the President, should without delay proceed to execute this Constitution.

The following is a complete list of the delegates appointed. Those whose names are included in brackets did not attend the convention.

Virginia.—George Washington, James McClurg, Edmund Randolph, John Blair, James Madison, George Mason, George Wythe.

New Jersey.—William Livingston (Governor), David Brearley, William Churchill Houston, William Paterson, [Abraham Clark], Jonathan Dayton.

Pennsylvania.—Thomas Mifflin (Speaker of the General Assembly), Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimmons, James Wilson, Gouverneur Morris, Benjamin Franklin (President of the State).

North Carolina.—William Blount, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight, Hugh Williamson.

Delaware.—George Read, Gunning Bedford, John Dickinson, Richard Bassett, Jacob Broom.

Georgia.—William Few, Abraham Baldwin, William Pierce, [George Walton], William Houston, [Nathaniel Pendelton].

New York.—Robert Yates, Alexander Hamilton, John Lansing.

South Carolina.—Charles Pinckney, Charles Cotesworth Pinckney, Pierce Butler, John Rutledge.

Massachusetts.—[Francis Dana], Elbridge Gerry, Nathaniel Gorham, Rufus King, Caleb Strong.

Connecticut.—William Samuel Johnson, Roger Sherman, Oliver Ellsworth.

Maryland.—James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll, John Francis Mercer, Luther Martin.

New Hampshire.—John Langdon, [John Pickering], Nicholas Gilman, [Benjamin West].

Of these sixty-one delegates, eleven had signed the Declaration of Independence. They were: Abraham Clark, George Clymer, Benjamin Franklin, Elbridge Gerry, Robert Morris, George Read, Roger Sherman, George Walton, James Wilson, Oliver Wolcott, and George Wythe. Eight were members of the Convention that framed the Articles of Confederation.

CHAPTER V

THE RESULT

THE following is an exact copy of the Constitution as adopted, with the spelling, capitalization, and punctuation of the original:

WE the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE. I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite

for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their

Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all

Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualification to hold and enjoy any Office of honour, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Be-

haviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy, and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the

Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to

the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. The Congress shall have Power

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and

Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE. II.

SECTION. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Elec-

tors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[* The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A Quorum for this Purpose shall consist of a Member or Members from twothirds of the States, and a Majority of

* This paragraph was materially changed by the Twelfth Amendment, which supersedes it.

all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive

within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.

SECTION. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the president alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacan-

cies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this

Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers, and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the

Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE. IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion, and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand

seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

GEO. WASHINGTON—
Presidt and deputy from Virginia

Then followed the signatures of thirty-eight members of the Convention.

The draft was accompanied by this letter of transmittal:

IN CONVENTION, SEPTEMBER 17, 1787.

SIR: We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired that the power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the General Government of the Union; but the impropriety of delegating such extensive trust to one body of men is evident: hence results the necessity of a different organization.

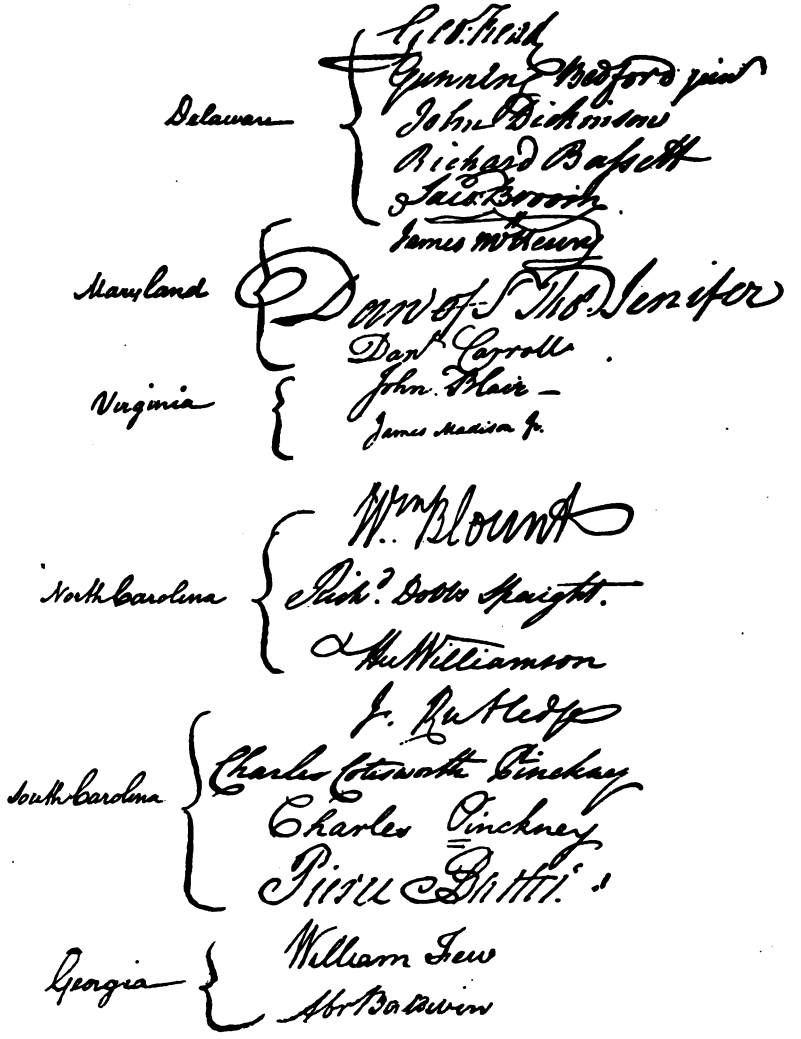
It is obviously impracticable, in the Federal Government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve

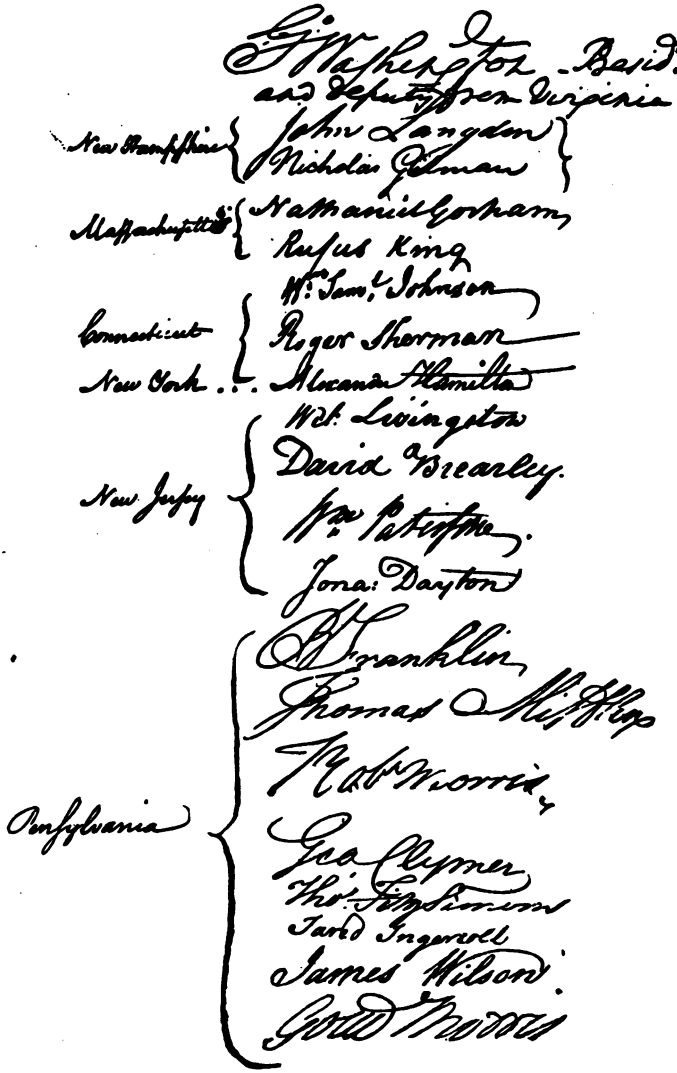
the rest. The magnitude of the sacrifice must depend as well on situation and circumstance as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American—the consolidation of our Union—in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the convention to be less rigid on points of inferior magnitude than might have been otherwise expected; and thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State, is not, perhaps, to be expected; but each will doubtless consider that, had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

Signatures of the Signers of the Constitution


Delaware
Maryland
Virginia
North Carolina
South Carolina
Georgia
James McHenry
Dan. Carroll
John Blair
James Madison Jr.
Wm Blount
Rich.d Dobbs Spaight.
Hu Williamson
J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler.
William Few
Abr Baldwin


Go: Washington - Presidt
and Deputy from Virginia
New Hampshire
John Langdon
Nicholas Gilman
Massachusetts
Nathaniel Gorham
Rufus King
Connecticut
Wm. Saml. Johnson
Roger Sherman
New York
Alexander Hamilton
New Jersey
Wil: Livingston
David Brearley.
Wm. Paterson.
Jona: Dayton
Pensylvania
B Franklin
Thomas Mifflin
Robt Morris
Geo. Clymer
Thos. FitzSimons
Jared Ingersoll
James Wilson.
Gouv Morris

With great respect, we have the honor to be, sir, your excellency's most obedient humble servants.

By unanimous order of the convention.

GEORGE WASHINGTON, *President.*

His excellency the PRESIDENT OF CONGRESS.

After taking ten days to consider the subject, Congress passed a resolution (September 28) directing that the Constitution be transmitted to the legislatures of the several States, to be by them submitted to a convention of delegates chosen by the people in each State, in conformity with the wish of the Convention.

CHAPTER VI

THE RATIFICATION

DELAWARE was the first State to ratify the Constitution, December 7, 1787. But Thomas Collins, President of that State, did not forward the certified copy to the Secretary of Congress till December 22. The vote was unanimous, and the resolution of ratification was signed by all the members of the State Convention, of which James Latimer was President.

The second State to ratify was Pennsylvania, December 12, 1787, by a vote of 46 to 23, and the announcement of the fact was officially directed to the President of Congress by Frederick Augustus Muhlenberg, President of the State Convention, December 15. The returns of this and most of the other States included a recital of the entire Constitution. Pennsylvania also offered a piece of territory ten miles square for a Federal district.

The third State to ratify was New Jersey, December 18, 1787. John Stevens was President of the

State Convention, and the vote of the thirty-eight delegates was unanimous.

The fourth State to ratify was Georgia, January 2, 1788, by a unanimous vote. The President of the State Convention was John Wereat, who forwarded the notification to the President of Congress three days later. Besides the necessary official language, his letter contained this passage: "We hope that the ready compliance of this State with the recommendations of Congress and of the late National Convention will tend not only to consolidate the Union, but to promote the happiness of our common country."

The fifth State to ratify was Connecticut, January 9, 1788. This State had an unusually large convention, which was in session a week. It consisted of one hundred and sixty-eight delegates. Forty of these voted against ratification and did not sign the certificate. Matthew Griswold, President of the Convention, said in his letter of transmittal: "This State will undoubtedly do all in their power to promote the establishment of so salutary a plan of government."

The Massachusetts Convention ratified the Constitution February 6, 1788, by a vote of 187 to 168. John Hancock, who had presided over Congress when the Declaration of Independence was signed, was President of this convention. His letter of

transmittal, besides the formal official declaration of assent, contained a passage "acknowledging with grateful hearts the goodness of the Supreme Ruler of the Universe in affording the people of the United States, in the course of His providence, an opportunity deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact with each other by assenting to and ratifying a new Constitution in order to 'form a more perfect Union, establish justice,'" etc. And it was added that, in the opinion of the convention "certain amendments and alterations in the Constitution would remove the fear and quiet the apprehensions of many of the good people of this commonwealth and more effectually guard against an undue administration of the Federal government." The Convention recommended nine such amendments, copied substantially from the constitution of Massachusetts:

1. That it be explicitly declared that all powers not expressly delegated are reserved to the several States.

2. That the basis of representation should remain at thirty thousand until the number of Representatives should be two hundred.

3. That Congress should not exercise the powers of Article I, Section 4, except when a State neglects or refuses to provide for elections.

4. That Congress should not lay direct taxes so long as the income from impost and excise is sufficient for the public exigencies.

5. That Congress should not give any company of merchants exclusive advantages of commerce.

6. That no person should be tried for crime until indicted by a grand jury.

7. That causes between citizens of different States should not be taken into the Supreme Court unless the matter in dispute was of the value at least of $3,000, nor into a lower Federal court unless it was at least $1,500.

8. That in civil actions between citizens of different States, issues of fact should be tried by jury, if either party so request.

9. That Congress should at no time consent that any person holding office under the United States should accept a title or an office from a foreign power.

Of these, the first and sixth were virtually incorporated in amendments to the Constitution that were adopted within three years.

William Sullivan, in his "Familiar Letters," tells us that in the Massachusetts Convention, where Elbridge Gerry opposed the Constitution, its ratification was due probably to the action of Governor Hancock, who proposed that the amendments be at the same time submitted to Congress. "It can

not be assumed for certainty," he says, "that this measure of Hancock's secured the adoption; but it is highly probable. The Convention may have been influenced by another circumstance. About this time a great meeting of mechanics was held at the Green Dragon Tavern, and the tavern and the street were thronged. At this meeting resolutions were passed, with unanimity and acclamation, in favor of the adoption. But, notwithstanding Hancock's conciliatory proposal and this expression of public feeling, the Constitution was adopted by the small majority of nineteen out of three hundred and fifty-five votes. The adoption was celebrated in Boston by a memorable procession, in which the various orders of mechanics displayed appropriate banners. It was hailed with joy throughout the States."

Maryland was the seventh State to ratify, April 28, 1788. George Plater presided over the Convention, which was in session one week. A resolution was adopted declaring that the Constitution should be considered only as a whole. When the question of adoption was put sixty-three delegates voted in the affirmative and eleven in the negative. Among those who voted against it were John Francis Mercer and Luther Martin, who had been members of the Convention that framed the Constitution. The ratification was signed by those only that had voted in the affirmative.

South Carolina was the next to ratify, May 23, 1788, by a vote of 149 to 73. Thomas Pinckney was President of the Convention, which was in session ten days. The letter of transmittal was accompanied by resolutions adopted by the Convention, to this effect:

That all arrangements for Congressional elections should be exclusively under the control of the several States, except when the legislatures refuse or neglect to provide for them.

That no part of the Constitution warrants a construction that the States do not retain every power not expressly relinquished to the General Government.

That the Government should never impose direct taxes unless the income from imposts and excise should prove insufficient for the public exigencies.

That in the third paragraph of the Sixth Article the word "other" should be inserted between "no" and "religious." The delegates considered that an oath was a religious test.

New Hampshire was the ninth State to ratify, June 21, 1788, by a vote of 57 to 46. And this completed the number necessary for the Constitution to become operative. John Sullivan presided over the Convention, and John Langdon was President of the State. Their letter of transmittal contained a verbatim copy of the gratitude passage in the

Massachusetts letter, and was accompanied by exactly the same suggestions for amendments that had come from the Bay State.

Virginia's Convention ratified the Constitution, June 26, 1788, by a vote of 89 to 79. This was five days later than New Hampshire; but as her announcement reached Philadelphia sooner, it was at first proclaimed that the Old Dominion had made the Union possible. Edmund Pendleton was President of the Convention. The letter of transmittal announced that the delegates "Do, in the name and in behalf of the people of Virginia, declare and make known that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whensoever the same shall be perverted to their injury or oppression; and that every power not granted thereby remains with them and at their will: that therefore no right of any denomination can be canceled, abridged, restrained or modified by the Congress, by the Senate or House of Representatives acting in any capacity, by the President or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that among other essential rights the liberty of conscience and of the press can not be canceled, abridged, restrained or modified by any authority of the United States." Virginia

did not adopt the Constitution without a struggle. Not only had Edmund Randolph refused to sign it, but the ratification was opposed by Patrick Henry, whose voice had been so loud for war and independence, and by James Monroe, who afterward was twice elected President under that same Constitution.

In Congress, on July 2, 1788, the announcement of New Hampshire's ratification was read, and the President reminded the members that this was the ninth State that had ratified. Thereupon it was moved and seconded that a committee be appointed to examine the records of ratification and report an Act for putting the Constitution into operation. On this question all the members voted in the affirmative except the two from Rhode Island, who were excused from voting, as their State had not participated in the Convention and had not ratified, and Abraham Yates of New York, who voted in the negative.

The committee reported July 8, with a resolution fixing the first Wednesday in the December following as the day for the appointment of electors in the several States, and the first Wednesday in January for the electors to meet and vote for a president, and leaving blank the name of a place for the first meeting of the new government.

This subject was debated from day to day, with

various amendments, till September 13, the difficulty being a want of agreement as to the best place for inaugurating the new government. New York, Philadelphia, Baltimore, Wilmington, Del., and Lancaster, Penn., were proposed. As finally passed, the resolution made the first Wednesday in January, 1789, the day for appointment of electors, the first Wednesday in February for the electors to assemble and vote, and the first Wednesday in March for inaugurating the government, and New York to be the place.

The most serious difficulty in the way of ratification was encountered in New York. That important State, with the finest harbor in the country—perhaps in the world—lay as a separator between the Eastern States and the others, all of which (except Rhode Island and North Carolina) had adopted the Constitution. A Union without New York would be a very imperfect Union. George Clinton, who was Governor of the State and also presided over the Convention, which was held in Poughkeepsie, opposed ratification, as did several other well-known and influential citizens.

A series of essays on the Constitution, explanatory and argumentative, appeared at this time in various publications—mainly in the "New York Packet" and the "Independent Journal"—and ran to eighty-five numbers. All were addressed "To the people

of the State of New York," and all were signed "Publius." Five of them were written by John Jay, and the others about equally by Alexander Hamilton and James Madison. Afterward they were gathered in a volume under the title "The Federalist," which has had several editions and is a standard authority in American polemics. The object of these essays was to secure the assent of New York to the adoption of the Constitution. The first essay, written by Hamilton, announced the plan and purpose in these words:

"I propose, in a series of papers, to discuss the following interesting particulars: The utility of the Union to your political prosperity. The insufficiency of the present Confederation to preserve that Union. The necessity of a Government at least equally energetic with the one proposed, to the attainment of this object. The conformity of the proposed Constitution to the true principles of republican government. Its analogy to your own State constitution. And, lastly, the additional security which its adoption will afford to the preservation of that species of government to liberty and to property. In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance that may seem to have any claim to your attention."

This promise was very completely fulfilled.

Through many pages of close reasoning the subject was considered in every aspect and the argument elaborated almost to tediousness. In their anxiety to win the vote of New York, the authors perhaps admitted some points that the verdict of history has not borne out; but on the whole the arguments were sound and their presentation forcible. Their method of treatment and the gist of their arguments may be seen from a few selected passages:

"The great principles of the Constitution proposed by the Convention may be considered less as absolutely new than as the expansion of principles which are found in the Articles of Confederation. The misfortune under the latter system has been that these principles are so feeble and confined as to justify all the charges of inefficiency which have been urged against it, and to require a degree of enlargement which gives to the new system the aspect of an entire transformation of the old. In one particular, it is admitted that the Convention have departed from the tenor of their commission. Instead of reporting a plan requiring the confirmation of the legislatures of all the States, they have reported a plan which is to be confirmed by the people and may be carried into effect by nine States only. It is worthy of remark that this objection, though the most plausible, has been the least urged in the publications which have swarmed against the

Convention. The forbearance can only have proceeded from an irresistible conviction of the absurdity of subjecting the fate of twelve States to the perverseness or corruption of a thirteenth—from the example of inflexible opposition given by a majority of one-sixtieth of the people of America to a measure approved and called for by the voice of twelve States comprising fifty-nine sixtieths of the people—an example still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country."

"Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the States, who are in fact under the most solemn obligations to furnish the supplies required of them, the intention evidently was, that the United States should command whatever resources were by them judged requisite to the 'common defence and general welfare.' It was presumed that a sense of their true interests and a regard to the dictates of good faith would be found sufficient pledges for the punctual performance of the duty of the members of the federal head. The experiment has, however, demonstrated that this expectation was ill-founded and illusory; and if we are in earnest about giving the Union energy and duration,

we must abandon the vain project of legislating upon the States in their collective capacities; we must extend the laws of the Federal Government to the individual citizens of America."

This analysis of the main features of the Constitution was written by Madison, in the thirty-eighth essay:

"In order to ascertain the real character of the Government, it may be considered: in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the Government are to be introduced.

"On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the People of America, given by deputies elected for the special purpose; but on the other, that this assent and ratification is to be given by the People, not as individuals composing one entire Nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State—the authority of the people themselves. The act, therefore, establishing the Constitution will not be a National but a Federal act.

"The next relation is to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the People of America; and the People will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. So far the Government is National, not Federal. The Senate, on the other hand, will derive its powers from the States, as political and coëqual societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the Government is Federal, not National. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coëqual societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the National representatives; but in this particular act they are to be thrown into the form of individual delegations from so many distinct and coëqual bodies politic. From this aspect of the Government, it appears to be of a mixed character, presenting at least as many Federal as National features.

"The difference between a Federal and a National

government, as it relates to the operation of the government, is supposed to consist in this, that in the former, the powers operate on the political bodies composing the confederacy in their political capacities; in the latter, on the individual citizens composing the nation in their individual capacities. On trying the Constitution by this criterion, it falls under the National, not the Federal character; though perhaps not so completely as has been understood.

"But if the Government be National with regard to the operation of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a National government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a People consolidated into one Nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres,

to the general authority than the general authority is subject to them within its own sphere. In this relation, then, the proposed Government cannot be deemed a National one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects.

"If we try the Constitution by its last relation, to the authority by which amendments are to be made, we find it neither wholly National nor wholly Federal. Were it wholly National, the supreme and ultimate authority would reside in the majority of the People of the Union; and this authority would be competent at all times, like that of a majority of every National society, to alter or abolish its established Government. Were it wholly Federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the Convention is not founded on either of these principles. In requiring more than a majority, and particularly in computing the proportion by States, not by citizens, it departs from the National and advances toward the Federal character. In rendering the concurrence of less than the whole number of States sufficient, it loses again the Federal and partakes of the National character. The proposed Constitution, therefore,

is, in strictness, neither a National nor a Federal Constitution, but a composition of both."

"That useful alterations will be suggested by experience could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable, and that extreme difficulty which might perpetuate its discovered faults. It, moreover, equally enables the General and the State governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other. The exception in favor of the equality of suffrage in the Senate was probably meant as a palladium to the residuary sovereignty of the States, implied and secured by that principle of representation in one branch of the legislature, and was probably insisted on by the States particularly attached to that equality. The other exception [concerning the slave trade] must have been admitted on the same considerations which produced the privilege defended by it."

The first forty-five essays having been devoted to a review of the general form of the proposed government and the general mass of power allotted to it, the remainder were devoted to an examination

of its particular structure and the distribution of power among its constituent parts.

The Constitution was attacked in articles and pamphlets innumerable. To these Madison replied, in the fortieth essay, "It can not have escaped those who have attended with candor to the arguments employed against the extensive powers of the government, that the authors of them have very little considered how far these powers were necessary means of attaining a necessary end. They have chosen rather to dwell on the inconveniences which must be unavoidably blended with all political advantages, and on the possible abuses which must be incident to every power or trust of which a beneficial use can be made. This method of handling the subject can not impose on the good sense of the people of America. It may display the subtlety of the writer; it may open a boundless field for rhetoric and declamation; it may inflame the passions of the unthinking, and may confirm the prejudices of the misthinking, but cool and candid people will at once reflect that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the greater, not the perfect good; and that in every political institution a power to advance the public happiness involves a discretion which may be misapplied and abused."

All those pamphlets, with their fine-drawn arguments and triumphal rhetoric, have gone to oblivion. They are found only on the dustiest shelves in the darkest corners of great libraries. But "The Federalist" has its perpetual place in American literature. There can be little doubt that New York must ultimately have come into the Union, and there can be no doubt that, but for the influence of "The Federalist," it would not have come when it did. The final vote by which the Poughkeepsie Convention ratified the Constitution (July 26, 1788) was thirty to twenty-seven; and it was voted also that New York's representatives in Congress be requested to exert all their influence to obtain the adoption of thirty-two amendments, which were specified. The more important of these were covered by the first ten amendments, which were ratified three years later. Some of them were identical with amendments suggested by the Massachusetts Convention. Of those that never were adopted, or even formally proposed, the more significant were to this effect: That no standing army or regular troops should be raised or kept up in time of peace without the consent of two-thirds of the members present in each House, and that a similar vote should be necessary for a declaration of war. That no alteration in the compensation of Senators and Representatives should go into opera-

tion till after a subsequent election. That no person should be eligible as Senator for more than six years in any term of twelve years. That no person should be eligible to the office of President of the United States a third time. And that the militia of any State should not be compelled to serve without the limits of the State for a longer term than six weeks, without the consent of the legislature.

North Carolina's Convention first met on August 1, 1788, but its ratification of the Constitution was not forwarded to Congress till December 4, 1789. The Convention was presided over by Samuel Johnston. The vote to ratify, though not unanimous, showed a large majority in favor. This Convention suggested twenty-six amendments, most of which were identical with those suggested by Massachusetts and New York. Among the others were these: That Congress should not declare any State to be in rebellion without the consent of at least two-thirds of all the members present of both houses, and, That no person should be capable of being President of the United States for more than eight years in any term of sixteen years.

The Rhode Island Convention, of which Daniel Owen was President, ratified the Constitution, May 29, 1790, by a vote of 34 to 32. And the announcement of the ratification was accompanied by [illegible] amendments, which the

Rhode Island delegation in Congress was urged to use all reasonable means to have adopted. Most of these were the same that had come from other States, some of them being identical in language. From their tone the reader might infer that the people had just determined to free themselves from a grinding despotism. We can not wonder that they should not have forgotten so soon the injustice of the British Government, which had caused the Revolution; but it seems strange that they should take this tone toward a government that they themselves were creating, which was already, by short tenures of office and numerous restrictions, deprived of any power for mischief. What possible excuse, for instance, could there be for such a declaration as this, gravely and officially put forth by the authority of a State: "That every freeman ought to obtain right and justice, freely and without sale, completely and without denial, promptly and without delay, and that all establishments or regulations contravening these rights are oppressive and unjust"? If the members of the Rhode Island Convention read the Constitution before ratifying it, what did they find therein that contravened these rights? And why did they restrict the declaration to the case of freemen? Ought not everybody to obtain right and justice? Two passages in the pronunciamento are notice-

able. This is nearly identical with one in Virginia's. "That the powers of government may be reassumed by the people whenever it shall become necessary to their happiness." In the Virginia declaration the expression, instead of "the people" as in Rhode Island's, was "the people of the United States," which appears to be a truism, since they were not making a contract with any one but themselves. In 1861, on the assumption that any part of the people might revoke the governmental powers at will, this was quoted to justify Virginia's attempt at secession. The argument was, that she had accepted the Constitution only conditionally; to which it was answered that the very structure and wording of the Constitution showed that there could be no such thing as a conditional acceptance, and that no conditional ratification was understood or would have been accepted. The following suggestion is identical with one of North Carolina's: "That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead." No such suggestion came from Pennsylvania, whence it might have been expected; and the writers of this appear to have been ignorant of the fact that those who have religious scruples against bearing arms have equal scruples against employing any one to bear arms for them.

The territory of Vermont had been claimed by both New Hampshire and New York, and because of the dispute she had been refused admission to the Confederation and representation in the Continental Congress. For several years she was an independent State, till March 4, 1791, when she became the first State admitted to the Union under the Federal Constitution.

At the first Presidential election under the Constitution, George Washington received the unanimous vote of the Electoral College, sixty-nine, and became President. John Adams received thirty-four votes and became Vice-President, as the other thirty-five were scattered among ten candidates, the largest vote for any one being nine for John Jay. Rhode Island, New York, and North Carolina did not participate in the election. The First Congress met in New York city, March 4, 1789; but there was no quorum for some time, and Washington was not inaugurated President till April 30.

CHAPTER VII

AMENDMENTS

THE First Congress under the Constitution, which began its session March 4, 1789, proposed to the States twelve amendments, which had been suggested by several of the State Conventions. The Virginia Convention spoke of them as a Bill of Rights. Congress proposed them with this preamble:

"The conventions of a number of States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the Government will best ensure the beneficent ends of its institution, Resolved," etc.

The first two of the twelve amendments proposed were these:

"ARTICLE I. After the first enumeration required by the First Article of the Constitution, there shall be one Representative for every thirty thousand,

until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress that there shall be not less than one hundred Representatives nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress that there shall not be less than two hundred Representatives nor more than one Representative for every fifty thousand persons.

"ARTICLE II. No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened."

These two articles failed to receive the necessary ratification from three-fourths of the States. Delaware declined to ratify the first, and New Jersey, New Hampshire, Pennsylvania and New York declined to ratify the second. The other ten (originally numbered from three to twelve) were adopted and stand as the first ten amendments to the Constitution. They were ratified by eleven States—all but Massachusetts, Connecticut, and Georgia. The earliest to ratify was New Jersey, November 20, 1789; the last was Virginia, December 15, 1791. These amendments are the following:

ARTICLE I

Congress shall make no law respecting an establishment of reli[redacted] free exercise

thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ARTICLE III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;

nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have Compulsory process for obtaining Witnesses in his favour, and to have the Assistance of Counsel for his defence.

ARTICLE VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution, of certain

rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Eleventh Amendment was proposed by the Third Congress (in session in Philadelphia) March 5, 1794, and on January 8, 1798, was declared by the President to have been ratified by three-fourths of the States and thus became a part of the Constitution. It follows:

ARTICLE XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The political forces of the country were early developed into two parties, the Federal and the Republican. The successors of the Federal party were the Whig party (which went out of existence in 1852) and the present Republican party. The successor of the early Republican party is the Democratic party of to-day. The Presidential elections

of 1796 and 1800 demonstrated that the method prescribed in Article II, Section 1, of the Constitution would not work at all as the framers intended and as the people expected. In 1796 the Federal candidates were John Adams, of Massachusetts, for President, and Thomas Pinckney, of South Carolina, for Vice-President. The Republican candidates were Thomas Jefferson and Aaron Burr. The vote of the Electoral College gave seventy-one to Adams, sixty-eight to Jefferson, fifty-nine to Pinckney, and thirty to Burr, with forty-eight scattering. The Federal Electors of South Carolina, wishing to make Pinckney President, had given their eight votes to him and Jefferson, and in some other States there was similar splitting. Thus it resulted that Adams became President and Jefferson Vice-President; and if the President had died in office the administration of the government would have fallen into the hands of a party that had not carried the election. In the election of 1800 the same candidates were presented. Jefferson and Burr each received seventy-three votes, Adams sixty-five, and Pinckney sixty-four. The tie between Jefferson and Burr threw the election into the House of Representatives, where the vote was by States. Thirty-five ballots were taken (February 11–17, 1801), each of which gave the vote of eight States to Jefferson and of six to Burr, with two States divided.

On the thirty-sixth ballot ten States voted for Jefferson, four for Burr, and two were blank. This made Jefferson President and Burr Vice-President.

These events suggested the propriety of a twelfth amendment, and the Eighth Congress, on December 12, 1803, proposed the following as a substitute for the third paragraph of Article II, Section 1, of the Constitution.

ARTICLE XII

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;— The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;— The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as

President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

This amendment was declared adopted by the Constitutional number of States, September 25, 1804. Connecticut, Delaware, New Hampshire, and Massachusetts had voted against it.

Legally, the Presidential Electors are still at liberty to vote for whom they please; but as a matter

of fact they simply register the will of the party that elected them, as expressed by the nominations made by that party in its national convention. This is so well understood when they accept their places on the party ticket that to do otherwise would be a gross breach of trust. The framers of the Constitution supposed that men of eminence in their respective States would be chosen as Electors, and that these, consulting with one another, would elect as President and Vice-President the ablest and most patriotic men in the country. But that has been superseded, probably forever, by the sharpness of party lines and the custom of national conventions. As the President is elected more for the purpose of administering the government in accordance with the ideas of the majority than of exercising his individual judgment, who shall say that the present plan is not the better one? When an election has taken place, the country knows what to expect in the way of governmental policy for the ensuing four years.

In 1809 Congress proposed an amendment providing that if any citizen of the United States should accept or retain any honor or title of nobility, or without the consent of Congress any present or office, from any foreign prince or power, he should thereupon cease to be a citizen of the United States and should be incapable of holding any office under them or

under any State. This failed to receive the requisite number of approvals. The legislatures of Maryland, Kentucky, Ohio, Delaware, Pennsylvania, New Jersey, Vermont, Tennessee, Georgia, North Carolina, and New Hampshire voted for it; and those of New York, Connecticut, South Carolina, and Rhode Island voted against it.

On the eve of the Civil War, when many of our statesmen were endeavoring to avert the impending conflict, Congress proposed this amendment, which was approved by President Buchanan, March 2, 1861:

"No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."

So far as the records in the State Department at Washington show, the sole State that took any action on this was Illinois, where a convention called for the purpose ratified it, February 14, 1862. This was the State that had given Abraham Lincoln to the Presidency, whose proclamation less than a year later abolished slavery.

Five days after the battle of Antietam (September 22, 1862) President Lincoln issued the preliminary Proclamation of Emancipation, and on January 1,

1863, the final one. The object of the Proclamation, as Mr. Lincoln indicated in his famous letter to Horace Greeley, was to save the Union. It was seen that slavery was the cause of the war, as foreshadowed in the speeches of some Southern members of the Convention that formed the Constitution; and it was held that the President properly exercised a war power in abolishing that institution and thus changing the contest from a war for a temporary peace into a war for a permanent peace.

But it was felt to be unsafe to trust forever to the authority of the Proclamation, especially as it did not, and could not, emancipate the slaves in some of the border States that were not in rebellion. There were statesmen, backed by a powerful party, who strenuously disputed the President's right to issue such a proclamation; and the time might come when a hostile Supreme Court would nullify it. For this reason, Congress proposed the following amendment, which President Lincoln approved February 1, 1865:

ARTICLE XIII. SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

On December 13, 1865, Secretary Seward issued a proclamation announcing that the proposed amendment had been ratified by twenty-seven States and was therefore a part of the Constitution. This was done as soon as he received the certificate of Georgia, the twenty-seventh State to ratify. But in fact all the thirty-six States ratified, except Delaware, Kentucky, and Mississippi. Two States added a high note of rejoicing to their official announcement. The joint resolution of the Michigan Legislature declared that "in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, it has become necessary to utterly destroy this barbarous foe of civilization, humanity, and religion." And Governor Henry G. Blasdel, of Nevada, added to his certificate of ratification, "The dogma of free government with human bondage as an incident thereof is forever exploded."

On June 16, 1866, Congress passed a joint resolution proposing a fourteenth amendment to the Constitution, as follows:

ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall

have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The evident purpose of this amendment was to prevent the States that were lately in insurrection from disfranchising their colored citizens, and reducing them again to a condition of virtual slavery. Apprehension of such action appeared to be well founded, from acts already passed by the legislatures of ten Southern States, which were controlled temporarily by men who had participated in the attempt at secession. For instance, in Mississippi the law forbade "any freedman, free negro or mulatto to rent or lease any lands or tenements, except in incorporated towns and cities, in which

place the corporate authorities shall control the same." In South Carolina the law provided that "no person of color shall pursue or practice the art, trade or business of an artisan, mechanic or shopkeeper, employment or business on his own account, and for his own benefit, without a license." And the fees for licenses ranged from ten dollars to a hundred dollars. No such license was required for any white man. A poll-tax was levied on colored women, but none on white women. In Louisiana the freedmen were required to make yearly contracts in the first ten days of January, and by these contracts they were held chargeable for all accidents to animals or implements, and thus made to pay for the ordinary wear and tear. Virginia had such a law concerning "vagrants" that almost any young colored person, of either sex, was liable to be apprehended as a vagrant and bound out, or indentured, for a term of years. Several of the States made it unlawful for colored men to keep firearms of any kind, under heavy penalties.

All this was looked upon as a breach of faith on the part of the Southern whites, because of two facts: no one had been punished for rebellion, except by temporary disabilities; and the emancipation of the slaves had made them count for their full number, instead of three-fifths, in the basis of representation, which would largely increase the Southern delega-

tion in Congress. It was held that there was a popular understanding that universal amnesty and universal suffrage were to go together; and as the amnesty was accepted, the freedmen should be placed on exactly the same basis as other citizens.

Naturally, this amendment became a party measure, and, generally speaking, in every legislature to which it was presented the members that represented the opposing party voted solidly against it. In some States it was ratified when first presented, and a succeeding legislature of opposite politics voted to withdraw the ratification. It was argued that this could be done at any time before the final adoption of an amendment by three-fourths of the States and its official proclamation as part of the Constitution. Such recessional action was taken by the legislatures of New Jersey and Ohio. Delaware, Maryland, Virginia, and Kentucky rejected it. The legislatures of the Southern States rejected it in 1866; but Congress made their acceptance of it a condition of readmitting them to the Union and permitting their representatives to occupy seats in the Senate and the House of Representatives, and in 1868 those States ratified it. All the Northern States ratified it, except California, from which the State Department has no record.

Under date of July 28, 1868, Secretary Seward officially proclaimed that the Fourteenth Amend-

ment had been adopted by more than three-fourths of the States and therefore had "become valid to all intents and purposes as a part of the Constitution of the United States." The proclamation recounted the votes of the States in this paragraph:

"The legislature of Connecticut ratified the amendment June 30th, 1866; the legislature of New Hampshire ratified it July 7th, 1866; the legislature of Tennessee ratified it July 19th, 1866; the legislature of New Jersey ratified it September 11th, 1866, and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it; the legislature of Oregon ratified it September 19th, 1866; the legislature of Texas rejected it November 1st, 1866; the legislature of Vermont ratified it on or previous to November 9th, 1866; the legislature of Georgia rejected it November 13th, 1866; and the legislature of the same State ratified it July 21st, 1868; the legislature of North Carolina rejected it December 4th, 1866, and the legislature of the same State ratified it July 4th, 1868; the legislature of South Carolina rejected it December 20th, 1866, and the legislature of the same State ratified it July 9th, 1868; the legislature of Virginia rejected it January 9th, 1867; the legislature of Kentucky rejected it January 10th, 1867; the legislature of New York ratified it January 10th, 1867; the legislature of Ohio ratified it January

11th, 1867, and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it; the legislature of Illinois ratified it January 15th, 1867; the legislature of West Virginia ratified it January 16th, 1867; the legislature of Kansas ratified it January 18th, 1868; the legislature of Maine ratified it January 19th, 1867; the legislature of Nevada ratified it January 22nd, 1867; the legislature of Missouri ratified it on or previous to January 26th, 1867; the legislature of Indiana ratified it January 29th, 1867; the legislature of Minnesota ratified it February 1st, 1867; the legislature of Rhode Island ratified it February 7th, 1867; the legislature of Delaware rejected it February 7th, 1867; the legislature of Wisconsin ratified it February 13th, 1867; the legislature of Pennsylvania ratified it February 13th, 1867; the legislature of Michigan ratified it February 15th, 1867; the legislature of Massachusetts ratified it March 20th, 1867; the legislature of Maryland rejected it March 23rd, 1867; the legislature of Nebraska ratified it June 15th, 1867; the legislature of Iowa ratified it April 3rd, 1868; the legislature of Arkansas ratified it April 6th, 1868; the legislature of Florida ratified it June 9th, 1868; the legislature of Louisiana ratified it July 9th, 1868; and the legislature of Alabama ratified it July 13th, 1868."

The Fifteenth Amendment was proposed by Congress in 1868, as follows:

ARTICLE XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

This amendment was ratified by thirty States, and was proclaimed a part of the Constitution March 30, 1870. It was clearly a political measure, intended, like a part of the Fourteenth, to prevent the Southern States from disfranchising the colored men, and was rejected by California, Delaware, Kentucky, Maryland, New Jersey, and Oregon. Tennessee did not act upon it at all. Probably the Pacific States rejected it lest some day it should be used to enfranchise the Chinese residents of those States. New York ratified it, but when the control of the State passed into the hands of the opposite party her ratification was rescinded, January 5, 1870. It was possible to obtain the assent of most of the Southern States, to this as well as to the Fourteenth Amendment, because the men that participated in the attempt at secession had not yet regained the control of those States. When they

did resume control they readily found ways of evading some of the provisions of those two Articles; and as those provisions have little practical application in the other States, they may be considered dead. Indeed, it is held by some, with at least a plausible argument, that the Fifteenth Amendment virtually nullifies the second section of the Fourteenth; and the propriety of repealing it, as a necessary preliminary to the enforcement of that section, has been suggested.

CHAPTER VIII

WHAT MIGHT HAVE BEEN

SOME stories are almost as interesting for what they omit as for what they include, and it is instructive to note what we escaped in our Constitution.

In the long discussion in the Convention over the office of President, nearly every possible variation was proposed, and some were urged with ingenious arguments. It was proposed, on the one hand, that there should be three Presidents at once—a sort of council—from different sections of the country, and on the other that there should be no President at all. A strong plea was made for rendering him ineligible for a second term, and it was also proposed that he hold office for life or during good behavior. The provision for his impeachment was not inserted without opposition, the plea being made that if he misbehaved others would necessarily be implicated with him, and they could be punished without degrading the office

of chief magistrate. Evidently this argument was a heritage from the monarchical principle that the king can do no wrong, and if wrong is done the fault must lie with his ministers. On the other hand, it was proposed that Congress should have the power to remove him at pleasure, or at the request of a majority of the State legislatures. The terms of office for the President, proposed and debated, were three years, four years, and seven years; and with the three-year term was coupled a provision that he should be ineligible for re-election after nine years. Every possible method for his election was proposed—by popular vote, by Congress, by the Governors of the States (with voting powers proportioned to the sizes of their States), and by Electors. There was opposition to giving him the veto power; and it was proposed that he should have no salary, this proposal being strongly supported by Dr. Franklin. And, moreover, one powerful member of the Convention moved to insert a provision that the President must be possessed of property to the value of $100,000, and Judges and Congressmen of smaller amounts.

Some of the delegates thought one House of Congress was all-sufficient, and would have voted for that. The majority favored a second chamber, but not all for the same reason.

It was urged [redacted] should represent

property, and at one stage of the debate it appeared probable that this idea would prevail. Very plausible arguments were offered in favor of it. This was another bit of unconscious heredity from Europe, where the heir exists as much for the estate as the estate for the heir. Many of the delegates were slow in rising to the idea famously expressed in Sir William Jones's ode, then but recently published, and probably not known to them, or some of the scholars among them would have quoted it:

What constitutes a State?
Not high-raised battlement or labored mound,
Thick wall, or moated gate;
Not cities proud with spires and turrets crowned;
Not bays and broad-armed ports,
Where, laughing at the storm, rich navies ride;
Not starred and spangled courts,
Where low-browed baseness wafts perfume to pride.
No!—Men, high-minded men,
With powers as far above dull brutes endued
In forest, brake, or den,
As beasts excel cold rocks and brambles rude—
Men who their duties know,
But know their rights, and, knowing, dare maintain,
Prevent the long-aimed blow,
And crush the tyrant while they rend the chain:
These constitute a State;
And sovereign Law, that State's collected will,
O'er thrones and globes elate,
Sits empress, crowning good, repressing ill.

But they got round to the idea after a time, with-

out the help of Sir William, or of the ancient Greek poet, Alcæus, from whom he borrowed it. The method of choosing the Senators was another subject of long discussion. Some thought they should be chosen by the House of Representatives, some by the Governors, and some by the people. And the proposals for the Senatorial term included four, five, six, seven, and nine years, and life.

There was strong contention that the States should have equal representation in the House of Representatives as well as in the Senate, and there was also opposition to such equality in the Senate. It was proposed that Representatives should be chosen by the State legislatures, for three years, and that both they and the Senators should be paid by their States.

In the discussion concerning the length of residence as a qualification for Senator or Representative, it was proposed that only native Americans should be eligible. And had it happened that every member of the Convention was a native, such a rule might have been adopted; but several of the delegates, including some of the most eminent—James Wilson, Robert Morris, and Alexander Hamilton—were born abroad, and it appeared absurd as well as ungracious to say they were unfit for legislators under the very Constitution that they were active in framing.

Through many days of debate it remained doubtful what powers would be bestowed on Congress, what withheld. At one time it was proposed that a two-thirds vote be required for every effective act of Congress; at another that Congress should have the power to negative any State laws that it might consider improper. Some delegates held the opinion that there should be a special council to revise all the laws of Congress before these should become operative. Others held that the Executive, or the Executive and the Judiciary together, should have power either to nullify or to suspend any law of Congress. The provision that all bills for raising revenue must originate in the House of Representatives just escaped being broadened into one giving the House the sole power to originate also the bills for appropriation of money and for the fixing of salaries. Some of the delegates wished to give Congress power to emit bills of credit—paper money; and, had this proposal been adopted, the serious legal question concerning the paper money that was in circulation from 1862 to 1879 could not have arisen. No cabinet officers are provided for in the Constitution; but six were proposed, to be appointed by the President. A provision was offered, but not inserted, authorizing Congress to punish others than its members for contempt. But the Supreme

Court has decided that this power is implied (Anderson *vs.* Dunn, 6 Wheaton, 204). There was an earnest debate on a proposed provision that any act regulating commerce, either domestic or foreign, should require a two-thirds vote in each house. Dr. Franklin proposed to give specifically to Congress the power to provide for cutting canals. This was not adopted, but the power appears to have been assumed by Congress in our day.

The chief concern with some of the delegates was, to preserve the alleged sovereignty of the several States at all hazards, and this was specifically proposed; while Mr. Gerry declared that the States never were independent or sovereign, and Dr. Franklin argued that sovereignty resided only in the entire body of the people. As the discussion continued, and the evolution of a national constitution proceeded, the idea of State sovereignty appears to have been gradually eliminated; so that, although the Articles of Confederation declared at the outset that "each State retains its sovereignty," there is no mention of this in the Constitution. Yet in after years the theory was proclaimed for political purposes, and it required all the destruction and sorrow of a great civil war to establish the principle that Franklin had enunciated in the Convention. No one denies, or ever has denied, that the States have *rights*. So have the counties,

so have the towns, so have the individual citizens; but none of these are sovereign. And a lack of close enough thinking to comprehend the distinction between State right and State sovereignty has scarred the face of our beautiful country with the graves of six hundred thousand young men.

CHAPTER IX

THE SOURCES

THE first crude idea of a constitution appears in a coronation oath wherein the sovereign binds himself to observe the laws and traditions and to do justice. But as this oath was usually broken it becomes a negligible factor.

Ingulph's "Chronicle of the Abbey of Croyland" has preserved a body of laws said to have been promulgated in the reign of Edward the Confessor (1042–1066), which with their half a hundred sections constitute a sort of charter. But expert antiquaries hold that the "Chronicle" is a forgery written three centuries later.

Henry I, to obtain the crown after the death of William Rufus (1100), which by right of primogeniture should have gone to his absent brother Robert, promised to issue a written charter, and kept his promise. In this short document (about 1,000 words) he guarantees the freedom of the church, discontinues onerous taxes, relieves widows

from forced marriages, makes provision for better disposal of estates of deceased persons, prescribes a penalty for counterfeiters, and remits many standing debts. It also contains this passage: "I restore to you the law of King Edward, with the amendments which my father, by the advice of his barons, made in it."

The "freedom of the church" guaranteed in this charter must not be confounded with religious liberty. It merely means that the benefices and property of the church shall be under the control of its prelates, not sold or farmed out by the King.

Henry's successor, Stephen (1135–1154), in a brief document confirmed Henry's charter and promised to abide by it. Henry II (1154–1189) did likewise. The former made little effort to redeem his promise; but the latter tried hard, and found a powerful opponent in Becket, Archbishop of Canterbury, who strove to make the ecclesiastical power supreme in civil matters. When the contest reached its height Henry called a council of the nobles and prelates at Clarendon to write a code of laws—what they understood to be the laws of Henry I—which Becket was asked to sanction. This code, called "The Constitutions of Clarendon," consisted of sixteen articles, most of which were designed to limit the power of the clergy over the laity. After three days' deliberation by the con-

vention (which has been called the first English Parliament), the articles were passed and became law. Becket assented to them, but when the Pope's sanction was refused he recanted. The struggle then continued till it led to Becket's assassination.

The jury system, which is believed to have originated in Denmark in the ninth century, was established in England by Henry II.

After the short reign of Richard I (1189–1199) John succeeded to the throne. One of his first acts was the levying of a tax on all the plough lands in England, to carry on a war with France. The nobles and the bishops protested against it, but in vain. John was decisively defeated in the war, and to meet his debts be levied other burdensome taxes. The Archbishop of Canterbury died, and King John caused the Bishop of Norwich to be elected his successor. The Pope, Innocent III, refused his assent and made Stephen Langton Archbishop. This created a feud between the King and the Pope, and Innocent laid the kingdom under interdict (1207). All religious services in the churches, except baptism, were suspended, and John was excommunicated. The sacraments were refused except to the clergy, the dead could not have Christian burial, and the church bells were silent. John made reprisals by confiscating the church lands and refusing to take any notice of even

the most serious offences committed against the clergy. This unhappy state of affairs continued for six years, when the Pope deposed John and commanded clergy and laity to unite and dethrone him. John, finding he had more foes than he could withstand, effected a reconciliation with the Pope by yielding every point and becoming his vassal, and signed a charter that guaranteed to the church perfect freedom in all ecclesiastical elections.

The barons now despised their King and refused to renew their allegiance to him except on condition of thorough reforms. They made actual war upon him, capturing his castles and destroying his parks, and would probably have assassinated him if he had not come to terms. This he did when he had been once more defeated abroad and had found the nobles solidly arrayed against him at home, only two making any pretense of loyalty.

The barons met at St. Edmundsbury in November, 1214, and determined to demand a new and comprehensive charter—an extension of the charter of Henry I—making oath together that if John refused they would consider themselves absolved from all allegiance. They then marched to London and presented their demands. John temporized and at length obtained a truce till Easter, on the promise of giving a definite and final answer at that time. In the mean time he sent a messenger to

Rome, to ask the counsel and assistance of the Pope. Innocent was desirous of maintaining the power of his vassal and sent letters accordingly to Archbishop Langton and the nobles, requesting them to withdraw their opposition to the King and submit to his authority. But at Easter these letters had not arrived, and John was still unprepared with an answer, when the barons and their followers appeared at Stamford and refused to permit any further delay. The Earl of Pembroke and Archbishop Langton, in John's behalf, met the barons and drew up a charter, which was presented to the King. It did not please him, and when the Archbishop in his reading arrived at the last section John flew into a violent passion and declared he would assent to nothing. That section provided that the barons should appoint twenty-five of their number to see to it that all the provisions of the Charter were faithfully carried out; and if there was remissness on the part of the King or his justiciary, and it was not quickly amended on notification, the whole body of nobles with their following were to "distrain and distress the King," capturing his castles and other possessions, till the grievances should be redressed.

When John's refusal was communicated to the barons they marched on London, declaring that they were "the army of God and Holy Church,"

while John lost his head apparently and consented to meet them in solemn convention. The meeting took place June 15, 1215, at Runnymede, a meadow on the right bank of the Thames, twenty-one miles west from London. Here the barons, armed and encamped, presented another charter, not essentially different from the first, but amplified; and this, finding himself helpless, John signed. He also signed an agreement that the barons should hold the city and the Tower of London for two months, as security for the faithful execution of the provisions of the charter; and if this were not then accomplished, the city and the tower were to be so held until it should be.

When the Pope heard of this he issued a bull declaring the Charter annulled and John released from his oath to observe it. But John died the next year, and Magna Carta remained as the Charter of English Liberty. It was a great gain not only for the barons but for their dependents and sub-dependents in the feudal system, which had been introduced into Britain by William the Conqueror.

If we read that famous document as if it were written to-day, many of the sixty-three sections will appear like mere statutes such as our legislatures are accustomed to enact and to repeal. But when we remember that in John's time all law was direct from the King, who was held to be, and considered

himself, the irresponsible sovereign, we see that anything defining or curtailing his power, or the power of those that acted by his authority, was of the nature of a constitution.

The chief provisions of the Charter were these:

That the Church of England should be free from civil interference in her elections, and all her rights and liberties should be inviolable.

That those who inherited titles or estates should not be taxed unreasonably, the maximum tax being mentioned.

That estates of heirs under age should not be robbed or injured by the trustees.

That heirs should be married without disparagement; that a widow should have her dower and inheritance without delay and without tax; and that no widow should be distrained to marry so long as she preferred to live single.

That land or rents should not be seized for debt, so long as there were chattels sufficient to pay the debt.

That if any one died in debt to a Jew, the heir, while under age, should pay no interest on the debt.

That scutage (personal tax) should not be levied unless by the general Council of the kingdom, except for ransoming the King or making his eldest son a knight or marrying his eldest daughter. And the same rule applied between landlord and tenant.

That the City of London should have all its ancient liberties.

That when a General Council of the kingdom should be called, all archbishops, bishops, abbots, earls, and greater barons, and all others who held of the King, should be summoned forty days in advance of the meeting and be notified of the subject to be determined.

That the Court of Common Pleas should not follow the King's Court, but be held permanently in one place; and that assizes should be held in each county four times a year.

That freemen should not be fined heavily for small offences; nor in any case should the articles by which the man made his living be taken away. That earls and barons should be subject to fine only by judgment of their peers.

That no town or tenant should be compelled to build new bridges or embankments.

That there should be no increase of the King's rents, except in his demesne manors.

That no constable or bailiff of the King should take corn or other chattels without making prompt payment therefor. Nor should they take horses or carts or timber for the King, except with the owner's consent.

That there should be uniform weights and measures throughout the kingdom.

That there should be no charge for a writ of inquisition—that is, a writ to produce an immediate examination of one held in prison on a criminal charge. This is supposed to be the origin of the writ of *habeas corpus*.

That no freeman should be arrested, imprisoned, amerced, outlawed, or banished except in a lawful manner by judgment of his peers. And the buying of a court decision was abolished. "We will sell to no man, we will not deny to any man, either justice or right."

That there should be freedom of trade for foreign merchants, and freedom of foreign travel for British subjects.

That no one should be appointed a justice, sheriff, or bailiff unless he understood the law of the realm.

That barons who had founded or endowed abbeys should, if these became vacant, have the revenues. The King should not take them.

That the new forests should be disforested and the land given back to the people, and abuses that had become common in the conduct of the foresters should be reformed.

That hostages held by the King for the loyalty of the barons should be released immediately; and that foreign knights and stipendiaries should be sent out of the kingdom.

That all property unlawfully taken from the

barons by John or his predecessors should be restored; and all fines that had been imposed unjustly should be returned or left to the decision of twenty-five barons.

That a woman should not sue a homicide for damages unless the man he killed was her husband.

That the barons might choose twenty-five of their number "who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them"; and if wrongs were not righted when the King or his justices were notified of them, the barons and their retainers were authorized to seize the lands and castles of the King or otherwise distrain and distress him, except that he and the Queen and their children were to be exempt from bodily harm.

There can be no question that Magna Carta must be considered one of the sources—perhaps the earliest—of our Constitution; but it was a source of inspiration rather than specific provision—an inspiration that passed down from generation to generation like a hereditary trait. If the unlearned reader, bridging the chasm of five centuries, compares the two documents, he is struck first by the disparity, the formal granting in the Great Charter of things that he has been accustomed to consider matters of course. Imagine the effect on the American people if Congress should require the

President to swear that he will not take bribes nor deny justice to any person!—or to promise that citizens who desire to go abroad and return again shall be permitted to do so! But when the reader considers the two documents in their general scope, he sees readily that the purpose is the same—to prevent those that are entrusted with the government from using its powers for their own personal profit, to the disadvantage and distress of the people. The great value of Magna Carta, the reason that it marked an epoch, lay in the fact that its presentation to John was a distinct assertion that sovereignty resides in the people, not in the monarch —that they were masters, not he. Superficially, it was an assertion by the barons in their own behalf; but they knew they could accomplish nothing without their retainers, and these also were beneficiaries of the Charter. The crowned heads of England never have ceased to be spoken of as sovereigns, or to refer to the people as their subjects; but of two that attempted to be sovereigns in reality, one was executed and the other was dethroned.

To trace a parallel between the presentation of Magna Carta and the formation of the Constitution, one must consider the States as standing in place of the barons, speaking for themselves and their people and setting forth the powers and the limitations of the government they were about to establish.

The provision that the barons might appoint twenty-five of their number to see that the King kept his promises, and that in case he refused to do so his lands and castles might be seized and he be distrained and distressed in various ways, is paralleled by the provisions for impeachment in the Constitution; and the clause in the Charter that in such case exempts the King, the Queen and their children from bodily harm is virtually repeated by the clause in the Constitution providing that judgment in cases of impeachment shall not extend farther than to removal from office and disqualification to hold any office of honor or profit under the Government.

The provision in the Charter for a just assessment of taxes finds its analogue in that clause of the Constitution which provides for the apportionment of direct taxes according to the Congressional representation of the several States.

Both documents aim at a removal of the justiciary from any influence of the executive—the Constitution doing this much more perfectly than the Charter. John was made to promise that the Common Pleas should not follow his court, and that assizes should be held in each county four times a year. The Constitution establishes a Supreme Court, and authorizes Congress to constitute inferior courts, all the judges to hold office during

good behavior, and their salaries not to be diminished, which renders them independent of the other branches of the government.

The Charter provides that freemen shall not be fined heavily for small offenses, etc.; and the Constitution forbids excessive bail, excessive fines, and cruel or unusual punishments.

The jury system, which existed before the Charter was drawn, is distinctly recognized therein, and this is repeated in the Constitution.

The writ of *habeas corpus*, established and guarded in the Constitution, was foreshadowed in the Charter.

The Charter provided that if one die in debt the heir should pay no interest while under age; and that lands or rents should not be seized for a debt so long as there were chattels sufficient to meet it. This may be a crude form of the permission that the Constitution gives to Congress to enact bankrupt laws.

The Charter provided for establishing uniform weights and measures throughout the kingdom; and the Constitution empowers Congress to do likewise.

Beyond these features, the two documents have nothing in common, for obvious reasons. The Charter had to deal with the feudal system early in the thirteenth century, and the Constitution with

a republic and well-defined ideas of individual liberty late in the eighteenth.

The governments of some of the original thirteen colonies were strictly provincial. The King commissioned governors and councils, who were empowered to convene an assembly of representatives of the people. When this was done, the Council acted as an upper house (or Senate) and the representatives as a lower house for legislative proceedings, the Governor (who directly represented the King) being the executive and having the veto power. The Governor also appointed all the other officers. This was the form of government in New Hampshire, New York, Virginia, the Carolinas, and Georgia.

Other colonies were the property of those to whom letters patent had been issued, authorizing them to take possession of certain territories and found colonies. These included Pennsylvania, Delaware, and Maryland. The proprietors appointed the governors and other officers, and organized such legislatures as they saw fit, being virtually supreme except that they held allegiance to the King.

In Massachusetts, Rhode Island, and Connecticut there were governments, essentially democratic, constituted by written charters granted by the Crown.

In all these colonies jurisprudence was based on the common law of England, and all had substantially the same degree of liberty and security for life and property. The patents and charters stipulated that no laws should be enacted that were repugnant to the laws of the mother country. The earliest charter was that of Virginia, granted in 1606, and the first representative legislature in North America was organized under that charter in 1619. There was a council of state for an upper house, and representatives chosen by the people for the lower house, while the Governor held the veto power. But five years later the charter was withdrawn, and Virginia was made a Crown colony ruled by a governor and twelve councilors whom he appointed. In 1642 William Berkeley was installed as Governor, the legislature was restored, and courts were established, with trial by jury.

The Governor and Company of Massachusetts Bay received a charter from Charles I, in 1628, to enable them to establish such laws as might be necessary for them as a trading company. But almost immediately the colony of Massachusetts was organized under this charter, which continued to be its supreme law till 1691, when a new charter took its place and the Plymouth colony was merged in Massachusetts. Here, too, there was a legislature composed of two houses.

In New Hampshire the executive, appointed by the King, was designated as President. He had a council, also of royal appointment; and there was a legislature chosen by popular suffrage. The Council is still a feature in the Government of that State, though the legislature includes a senate also.

Pennsylvania was a proprietary colony, granted to William Penn by letters patent in 1681, in satisfaction of a claim of £16,000 against the British Government, which he inherited from his father, the Admiral. His patent empowered him to appoint all officers, establish courts, grant pardons, etc., the King simply reserving the right to veto. But in 1701 he gave the colonists a constitution, establishing a government that included a governor, a council of state, and a legislature called the Assembly of Deputies.

The other colonies had similar histories, with various episodes, such as the attempt of James II in 1687 to annul all the New England charters and bring those colonies together under one governor; which was frustrated in Connecticut by hiding the charter in the hollow of an oak tree.

From the structure of these colonial governments the framers of the Constitution naturally took many of the ideas that are embodied in that instrument.

Meanwhile, crude demands for constitutional

rights had been made formally in England. In 1628 Parliament presented to Charles I a document that is called the Petition of Right. It complained of illegal taxes, suspension of the writ of *habeas corpus*, condemnations without trial, the quartering of soldiers and mariners on the inhabitants, the trial and execution of men by martial law when the civil law was competent, and that in many instances real offenders were not punished. Charles returned an evasive answer; and when this was declined as not being satisfactory he answered that right should be done as petitioned. But of course he did not keep his word.

This and the numerous royal betrayals that followed, resulting in the revolution of 1688, were vividly present to the mind of every Englishman when the crown was offered to William and Mary in 1689. Accordingly, that offer was preceded by a Declaration of the Rights of the People of England, made by the Lords and Commons, to which William and Mary were obliged to assent before taking the coronation oath. The preamble recites the misdeeds, usurpations, and other unjust acts of James II, and then makes thirteen specific declarations, at least six of which are echoed in the United States Constitution: That it is the right of subjects to petition the King; that there should be no standing army in time of peace, except with the consent of

Parliament; that the Protestant subjects should be permitted to keep arms for their defense; that freedom of speech, and debates in Parliament, ought not to be questioned in any court or other place out of Parliament; that excessive bail should not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; and that sessions of Parliament should be held frequently.

The Pilgrim Fathers, just before landing at Plymouth, in 1620, signed a solem compact, which, though very brief, for several years served as the constitution of the colony. Omitting the preamble and signatures, this is the entire text: "Having undertaken, for the glory of God and the advancement of the Christian faith and honor of our King and country, a voyage to plant the first colony in the northern parts of Virginia, we do, by these presents, solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation and furtherance of the ends aforesaid, and by virtue hereof, to enact, constitute and frame such just and equal laws, ordinances, acts, constitutions and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony; unto which we promise all due submission and obedience."

A more specific constitution than this—held to be

the first real, free constitution ever written—was that which in 1639 was adopted by the inhabitants of Windsor, Hartford, and Wethersfield, in Connecticut. Its preamble gave as the reason for its framing and adoption that "there should be an orderly and decent government established, to dispose of the affairs of the people at all seasons." It provided for an election every year, in April, for choosing a governor and magistrates, the elections to be by ballot. The governor must be a member of an approved congregation, and he could not be chosen oftener than once in two years. The governor, the magistrates, and twelve deputies (four from each town) formed what was termed the General Court for the enactment and execution of laws. For the election of the deputies in the several towns, the freemen were to be notified by the town constable to gather on a certain day and "agitate the affairs of the commonwealth," which sounds very much like modern political campaigning. The deputies, when they met, were to be judges of the qualifications of members of their own body. And there was a provision that if the proper officers neglected to call a meeting of the General Court the freemen could call it themselves. This Constitution contained no mention of the King and no intimation of any supreme authority but that of the people. Every deputy must be a resident of the town that

he represented, and there was no taxation without representation.

Four years later (1643), principally because of danger from the Indians and imagined danger from the Dutch of Manhattan, a league was formed by Massachusetts, Plymouth, Connecticut, and New Haven, called "The United Colonies of New England." The league was offensive and defensive, and was intended to be perpetual. Each colony retained jurisdiction in local affairs, but the cost of war was to be borne by all in proportion to the number of male inhabitants between sixteen and sixty years of age, and the quotas of fighting men were apportioned. Two commissioners from each colony were to form a legislative body, meet on the first Monday in September, choose one of their number president, and enact such laws as appeared to be necessary, and among these was a fugitive-slave law. This union lasted until the charters expired. Rhode Island had been excluded at the instance of Massachusetts.

This crude attempt at union was followed by several others.

As the crisis approached that resulted in establishing independence, the famous Declaration was issued; and of the specific abuses enumerated in it, many are carefully guarded against in the Constitution that was framed eleven years later. But

these ideas were not altogether novel at the signing of the Declaration. So common were they that that famous instrument had been preceded by several others, briefer but to the same effect. Thus the town of Mendon, in Worcester County, Massachusetts, on March 1, 1773, passed a series of resolutions that anticipated several of the most striking passages in the national Declaration. They declared, "That all men have naturally an equal right to life, liberty, and property; that just and lawful government must originate in the free consent of the people; and that a right to liberty and property is absolutely inalienable." At Milton, Suffolk County, Massachusetts, September 6, 1774, were passed the Suffolk Resolutions, so-called—supposed to have been written by Dr. Joseph Warren, who was killed at Bunker Hill—which more closely resemble the great Declaration. In Chester County, Pennsylvania, May 31, 1775, were passed resolutions asking all citizens to pledge themselves to learn military exercises, and declaring "we will at all times be in readiness to defend the lives, liberties, and properties of ourselves and fellow countrymen against all attempts to deprive us of them." On the same day in Mecklenburg County, North Carolina, a series of resolutions was adopted that closely resembled the Suffolk Resolutions of the year before. And a week later

(June 6, 1775) Cumberland County, New York (now southern Vermont), passed similar resolutions. In January, 1776, Thomas Paine published anonymously a pamphlet, widely circulated, which presented strong reasons for independence, saying, "All men confess that a separation between the countries will take place one time or other. To find out the very time, we need not go far, for the time hath found us."

All these declarations pointed directly to the need of a written constitution; for it was not to be supposed that colonists separating themselves from the mother country because of a long list of specified abuses would set up another government without guarding abundantly against a repetition of those abuses.

To these sources of the ideas embodied in the Constitution various commentators have added Montesquieu's "Spirit of the Laws," quoting from it such passages as "There is no liberty if the judiciary be not separated from the legislative and executive powers," and Sir Henry Sumner Maine, in his treatise on Popular Government, boldly declares that "It may be confidently laid down that neither the institution of a Supreme Court nor the entire structure of the Constitution of the United States were the least likely to occur to anybody's mind before the publication of the *Esprit des Lois*"

—which is a very strange dictum to come from a writer usually so astute. Montesquieu's famous work was published in 1748, hardly forty years before the convention that framed the Constitution, while the various Colonies or States had been living for more than a century under constitutions that presented many of the features adopted for the national constitution, all of which must have been familiar to the framers of that instrument. Sir Henry is more nearly happy when he writes, in the same treatise, "The Constitution of the United States is colored throughout by political ideas of British origin, and it is in reality a version of the British Constitution as it must have presented itself to an observer in the second half of the last (18th) century." This is to a large extent true; but probably to most of the delegates these ideas had come through the State constitutions, or at least were commended because they had been tried therein. Every one of the States had a government that consisted of a governor, a council, and an assembly of delegates chosen by the people. The only restriction upon the legislative authority was, that no law must be enacted that was inconsistent with the laws and customs of England; just as now the laws of the States must not be repugnant to the national Constitution. All the inhabitants were considered natural-born subjects

of England, with the common law as their inheritance.

The movement toward effective union was slow and difficult, partly because of jealousy between the colonies and an overweening idea of local rights and interests, and partly from a reluctance to delegate governmental powers to any organization not under their immediate control. But circumstances were making a steady fight against prejudices, and the wiser statesmen probably saw the day of union and constitution long before it arrived. When indignation was aroused by the Stamp Act, in 1765, delegates from nine of the colonies were sent to New York, where they formed a friendly alliance for resistance to taxation. The law was repealed the next year and the alliance then came to an end. But renewed attempts to tax the colonies led to another movement toward union, suggested by Massachusetts, and on September 4, 1774, delegates from twelve colonies (all but Georgia) met in Philadelphia and formed what was known as the Continental Congress. It was this body that signed and issued the Declaration of Independence in 1776.

The Continental Congress had so little power that the student of history wonders how the war of independence ever was carried through to success. Of the delegates in that Congress, some were

chosen by the colonial legislature, some by one branch of the legislature, and some by a popular convention. Each colony was entitled to any number of delegates from two to seven; but in voting, each colony, whether large or small, whether it had more or fewer delegates, had but one vote.

On October 14, 1774, this Congress issued a Declaration of Rights. The preamble accused the British Parliament of injustice and tyranny in that it had established a board of tax-commissioners with unconstitutional powers; had made colonial judges dependent on the Crown for their salaries; had kept standing armies in the colonies in time of peace; had declared that colonists might be transported to England to be there tried for treason; had passed a bill closing the port of Boston; that assemblies had been unlawfully dissolved when they attempted to deliberate on grievances, and petitions to the Crown were treated with contempt by the ministers of state; and that the good people of the several colonies had appointed deputies to sit in General Congress in the City of Philadelphia "in order to obtain such establishment as that their religion, laws, and liberties may not be subverted." It then declared: "That the inhabitants of the English Colonies in North America, by the immutable laws of nature, the principles of the

English Constitution, and the several charters or compacts, have the following rights":

That they are entitled to life, liberty and property; and they have never ceded to any sovereign power whatever a right to dispose of either without their consent.

That our ancestors who first settled these colonies were, at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects within the realm of England.

That by such emigration they by no means forfeited, surrendered or lost any of those rights; but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them as their local and other circumstances enable them to exercise and enjoy.

That the foundation of English liberty and of all free government is a right in the people to participate in their legislative council; and as the English colonists are not represented, and from their local and other circumstances can not properly be represented in the British Parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their Sovereign, in such manner as has

been heretofore used and accustomed; but, from the necessity of the case and a regard to the mutual interests of both countries, we cheerfully consent to the operation of such acts of the British Parliament as are, *bona fide*, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country and the commercial benefits of its respective members, excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America without their consent.

That the respective Colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

That they are entitled to the benefit of such of the English statutes as existed at the time of their colonization.

That these, his Majesty's Colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charters or secured by their several codes of provincial laws.

That they have a right peacefully to assemble, consider of their grievances, and petition the King; and that all prosecutions, prohibitory proclamations, and commitments for the same are illegal.

That the keeping a standing army in these

Colonies in times of peace, without the consent of the legislature of that colony in which such army is kept, is against law.

It is indispensably necessary to good government and rendered essential by the English Constitution, that the constituent branches of the legislature be independent of each other; that, therefore, the exercise of legislative power in several Colonies by a council appointed during pleasure by the Crown is unconstitutional, dangerous, and destructive to the freedom of American legislation.

All and each of which the aforesaid Deputies, in behalf of themselves and their constituents, do claim, demand, and insist on as their indubitable rights and liberties, which can not be legally taken from them, altered, or abridged, by any power whatever, without their own consent, by their representatives, in their several provincial legislatures.

These resolutions come very near to the Great Declaration in all but the idea of independence, and the specific acknowledgment of the King's right to veto marks their careful avoidance of that. The men that framed them appear not to have known whither they were drifting.

But the bloodshed at Lexington and Concord and Bunker Hill, the capture of Ticonderoga by Allen's Green Mountain Boys, Arnold's march on

Quebec through the wilds of Maine, Montgomery's capture of Montreal, Washington's investment with military command at Cambridge, and the battles of Long Island and Harlem Heights—all these acts of war proclaimed an attitude that must be defined either as criminal rebellion or as rightful independence. King George and his generals called it rebellion; the colonists could not much longer delay a formal declaration that it was independence. And this came in the immortal document written originally by Thomas Jefferson, amended in some respects (not in all for the better) by Congress, signed by fifty-six members, and issued on July 4, 1776.

Even had there been no Magna Carta, no Bill of Rights, or other written protest against tyranny, that Congress, having "a decent respect to the opinions of mankind," could hardly have avoided an official and categorical statement of "the causes which impelled them to the separation" to be proved by "facts submitted to a candid world."

And from the Declaration it followed, logically and obviously, that when they set up a new and independent government they must leave no room for doubt as to the definition and limitation of its powers. It also followed that the new constitution must render impossible the abuses complained

of in the Declaration. And as these abuses had been perpetrated by a hereditary monarch and a parliament in which the colonists were not represented, it was also inevitable that the new executive must be elective, with a limited term, and that the legislative body must be fairly representative of all that were to obey its enactments and uphold its power. In the Declaration of Independence the colonies are first officially called "States," and together the "United States of America," and two months later (September 9, 1776) a resolution was adopted declaring, "That in all continental commissions and other instruments where heretofore the words 'United Colonies' have been used, the style be altered, for the future, to the United States."

CHAPTER X

CONCLUSION

It is a familiar maxim that every great achievement is the result of growth, time and patience being indispensable elements. The Laureate, in well-known lines, justly boasts of his country as the land—

> "Where Freedom broadens slowly down
> From precedent to precedent."

In our own country we may say that she moves somewhat faster, yet here, too, her steps are deliberate. The pilgrims that landed on Plymouth Rock on that bleak shore established religious liberty—for themselves, but not so completely for others. When a century and a half had rolled by, the three millions that succeeded the two hundred had arrived at the idea of complete civil and religious liberty for all—all except the colored man. And when another century had elapsed, he, too, was acknowledged to have a right to life, liberty, and the pursuit of happiness. Thus stands our Con-

stitution, so far as it has been perfected to the present day. What the future may do with it we do not know; but we do know that if it remains unchanged there need be no difficulty in living under it in peace and safety; and that if there is a change it will be because experience has convinced a great majority of the people that a change is desirable. The highest praise is bestowed upon the unwritten British Constitution because of its flexibility. But we may say of our own that it is rigid when rigidity is demanded by safety, and flexible when flexibility is necessary for improvement. The adoption of fifteen amendments within a period of eighty years is proof of sufficient flexibility.

It has been said, half sarcastically, that the Constitution is not what it is, but what the Supreme Court thinks it is. But this is only to say, that if any passage is obscure or doubtful, the elucidation or interpretation is within the province of our highest judicial tribunal—exactly where it should be. But in general the great instrument is written with such admirable clearness that there is little to be explained; and even the famous treatises upon it have done hardly more than point out what is obvious to any intelligent and thoughtful reader.

It must be admitted that, after all the amendments, the Constitution still has defects. Most of

these may be traced to the chief original difficulty that was encountered in its formation—the provincial spirit of that time, and the determination to subordinate the Republic to the States as far as possible. Whatever may have been the justification for this purpose then, it has grown less and less as the country has advanced, though it has not yet entirely disappeared. It is unreasonable to assume that there can be any real antagonism or difference of interests between two States that are separated only by a surveyor's line. And when the whole country is seamed by navigable rivers, crossed in every direction by railways, and netted with telegraph wires; when families have a summer home in Connecticut and a winter home in Florida; when men are exploiting the mineral regions of Michigan and Alabama with capital obtained in New York and Pennsylvania; when one brother tills the paternal acres in New Jersey, while another clears for himself a new farm in Oregon; and when thousands of students, from every part of the land, sit side by side to get their education in the numerous colleges and technical schools—not much margin remains for even an imaginary difference of interests in the greater industries and the important concerns of life. With this development it is natural to look for a gradual diminution of the exclusive power of the States, though they

remain forever indestructible, and a widening of the scope of the National Government.

Everybody sees that the discrepancies in the marriage and divorce laws between the various States are a legal solecism and a social scandal; and the time must come when an amendment of the Constitution will require one Federal law for all. And some see, in the powerlessness of the President to suppress disorder in any State except on the application of its officials—though the lives and property of citizens of other States may be in peril—the serious danger that must arise in case of a corrupt or cowardly Governor. But not until some costly experience has demonstrated and emphasized this defect is it likely to be remedied by an amendment.

The veto power is a remnant of kingly prerogative, for which there is no logical excuse in a republic. To begin by declaring that the three branches of government should be independent of each other, and end by giving the executive two-thirds of the legislative power—so far as negatives are concerned —is the height of absurdity. That the executive should have the privilege of returning a bill with the reasons for his disapproval is common sense; but when his arguments fail to convince a single legislator, it is not common sense to say that a simple majority vote shall not be sufficient for this

bill as for others. The argument is made, that the executive should not be required to enforce a law of which he can not approve. But this has the defect of proving too much; for he is required to enforce those that are already on the statute-book, though they may include many that he does not approve. It is also said that he needs the veto for his own defence. This also proves too much; for in that case no bill should pass over his veto, even by a unanimous vote. When the executive seriously needs defence against the hundreds of legislators that directly represent the people, it is safe to assume that it is time for him to retire. And in England the real executive does so retire. The truth is, that for every instance in which our national, State, and municipal executives have used the veto wisely, there are a dozen in which it has been wielded dishonestly. So long as an executive simply signs proper bills, he calls no attention to himself; but when he is ambitious of a cheap reputation for fearlessness, watchfulness, and sterling integrity, he slashes right and left with the veto, and he usually gets what he thus bids for. There is also another use of this prerogative, indirectly for the benefit of cowardly or dishonest legislators. Sometimes, when they dare not displease their constituents by voting against a bill to which they are not friendly, they vote for it with an understanding that it is to

be vetoed. A flagrant example of this was President Buchanan's veto of the Homestead Bill. Perhaps some future generation will be logical enough to take the veto power out of the Constitution, or at least cut down the required two-thirds to a simple majority.

One more defect in the Constitution is apparent when we consider the fact that Congress may make any requirements it pleases before admitting a new State to the Union; but as soon as that State is fairly in the Union it may change its constitution to suit itself, even directly reversing that which it had to do to gain admission, and Congress is absolutely powerless to prevent it.

Time, let us hope, will remedy these defects, and give our posterity a Constitution that will neither lack any power that it should have, nor contain any articles that are atrophied by disuse.

If we could find an intelligent person ignorant of geography, and showing him an unlabeled globe, ask him to point out the most desirable country on its surface, after turning and studying it thoughtfully he might say: "Here is one that borders broadly, with many harbors, on both great oceans—the only country of which this is true. On the south it is bounded by an immense gulf, large enough to be called a sea, and on the north by a

series of great lakes. It has long rivers that are probably navigable; and several chains of mountains suggest an abundance of mineral treasures; while the innumerable streams that cross the intervening plains are proof of a well-watered and fertile soil. It appears to have an area of about three million square miles, all in the north temperate zone, but stretching across so many degrees of latitude that the natural productions must be very varied, probably including everything necessary to the enjoyment of civilized life; and no powerful nation is near enough to require great standing armies. If there is one country on the earth that is richer, safer, more delightful and more inexhaustible than all others, it must be this; and if it has an intelligent population and a free government, it should be the happiest of all."

APPENDIX

The day on which the independence of the United States was declared was the 2d of July, 1776. On that day the Continental Congress adopted this resolution:

Resolved, That these United Colonies are, and, of right, ought to be, Free and independent States; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the State of Great Britain is, and ought to be, totally dissolved.

Two days later (July 4th), the extended Declaration—now famous in the literature of nations—was agreed to. The delegates had been instructed by their constituents to declare for independence, and the subject was referred to a committee consisting of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Philip Livingston. The document was written by Mr. Jefferson, and amended somewhat by the Committee. The following is the full text as adopted and proclaimed. It was passed by unanimous vote, and was signed by every delegate:

A Declaration by the Representatives of the United States of America, in Congress assembled.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off

such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, having, in direct object, the establishment of absolute tyranny over these States. To prove this, let facts be submitted to a candid world:

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his Governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the mean time, exposed to all

the danger of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose, obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined, with others, to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the powers of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose

known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress, in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, **Free and Independent States**; that they are absolved from all allegiance to the British crown, and that all political connexion between them and

the state of Great Britain, is, and ought to be, totally dissolved; and that, as *FREE AND INDEPENDENT STATES*, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And, for the support of this declaration, with a firm reliance on the protection of **DIVINE PROVIDENCE**, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members: JOHN HANCOCK.

New Hampshire.
Josiah Bartlett,
William Whipple,
Matthew Thornton.

Rhode Island.
Stephen Hopkins,
William Ellery.

Connecticut.
Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

New York.
William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

New Jersey.
Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

Pennsylvania.
Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

Massachusetts Bay.
Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

Delaware.
Cæsar Rodney,
George Read,
Thomas M'Kean.
Maryland.
Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton
Virginia.
George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jun.
Francis Lightfoot Lee,
Carter Braxton.
North Carolina.
William Hooper,
Joseph Hewes,
John Penn.
South Carolina.
Edward Rutledge,
Thomas Heyward, jun.
Thomas Lynch, jun.
Arthur Middleton.
Georgia.
Button Gwinnett,
Lyman Hall,
George Walton.

Resolved, That copies of the Declaration be sent to the several assemblies, conventions, and committees, or councils of safety, and to the several commanding officers of the continental troops; that it be proclaimed in each of the United States, and at the head of the army.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE THE UNDERSIGNED DELEGATES OF THE STATES AFFIXED TO OUR NAMES, SEND GREETING.—Whereas the Delegates of the United States of America in Congress assembled did on the 15th day of November in the Year of our Lord 1777, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode-island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, in the words following, viz.

"ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES OF NEW-HAMPSHIRE, MASSACHUSETTS-BAY, RHODE-ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW-YORK, NEW-JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND,

* This is a literal copy of the original, including spelling, punctuation, and the use of capital letters.

VIRGINIA, NORTH-CAROLINA, SOUTH-CAROLINA, AND GEORGIA.

ARTICLE I. The Stile of this confederacy shall be "The United States of America."

ARTICLE II. Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the united states, in congress assembled.

ARTICLE III. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general warfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from Justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabi-

tants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the Owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

ARTICLE V. For the more convenient management of the general interest of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November, in every year, with a power reserved to each state, to recal its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year.

No state shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the united states, for which he, or

another for his benefit receives any salary, fees or emolument of any kind.

Each state shall maintain its own delegates in any meeting of the states, and while they act as members of the committee of the states.

In determining questions in the united states, in congress assembled, each state shall have one vote.

Freedom of speech and debate in congress shall not be impeached or questioned in any Court, or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from and attendance on congress, except for treason, felony, or breach of the peace.

ARTICLE VI. No state without the Consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King prince or state; nor shall any person holding any office of profit or trust under the united states, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the united states in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the united states in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered

into by the united states in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the united states in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be estab-

lished by the united states in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the united states in congress assembled shall determine otherwise.

ARTICLE VII. When land-forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ARTICLE VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the united states in congress assembled, shall from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the united states in congress assembled.

ARTICLE IX. The united states in congress assembled, shall have the sole and exclusive right and

power of determining on peace and war, except in the cases mentioned in the 6th article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the united states shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of

the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged

among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward," provided also that no state shall be deprived of territory for the benefit of the united states.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the united states, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The united states in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated—establishing or regulating post-offices from one state to another, throughout all the united states,

and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the united states, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the united states —making rules for the government and regulation of the said land and naval forces, and directing their operations.

The united states in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of Money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental offi-

cers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the united states; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the united states in congress assembled: But if the united states in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent

to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

The Congress of the united states shall have power to adjourn to any time within the year, and to any place within the united states, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the Journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite.

ARTICLE XI. Canada acceding to this confederation, and joining in the measures of the united

states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged.

ARTICLE XIII. Every state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation is submitted to them. And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and

confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united states in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of Pennsylvania the 9th Day of July in the Year of our Lord, 1778, and in the 3d year of the Independence of America.

Josiah Bartlett,	John Wentworth, jun., August 8th, 1778,	On the part and behalf of the state of New Hampshire.
John Hancock, Samuel Adams, Elbridge Gerry,	Francis Dana, James Lovell, Samuel Holten,	On the part and behalf of the state of Massachusetts-Bay.
William Ellery, Henry Marchant,	John Collins,	On the part and behalf of the state of Rhode-Island and Providence Plantations.
Roger Sherman, Samuel Huntington, Oliver Wolcott,	Titus Hosmer, Andrew Adam,	On the part and behalf of the state of Connecticut.
Jas Duane, Fras Lewis,	William Duer, Gouvr Morris,	On the part and behalf of the state of New-York.
Jno Witherspoon,	Nathl Scudder,	On the part and behalf of the state of New-Jersey, November 24th, 1778.
Robt Morris, Daniel Roberdeau, Jona Bayard Smith,	William Clingan, Joseph Reed, 22d July, 1778,	On the part and behalf of the state of Pennsylvania.
Tho. M'Kean, Feb. 12, 1779, John Dickinson, May 5, 1779,	Nicholas Van Dyke,	On the part and behalf of the state of Delaware.
John Hanson, March 1st, 1781,	Daniel Carroll, March 1st, 1781,	On the part and behalf of the state of Maryland.
Richard Henry Lee, John Banister, Thomas Adams,	Jno Harvie, Francis Lightfoot Lee,	On the part and behalf of the state of Virginia.

John Penn, July 21st, 1778,	Corns Harnett, Jn° Williams,	On the part and behalf of the state of North-Carolina.
Henry Laurens, William Henry Drayton Jn° Matthews,	Richd Hutson, Thos. Heyward, jun.	On the part and behalf of the state of South-Carolina.
Jn° Walton, 24th July, 1778,	Edwd Telfair, Edwd Langworthy,	On the part and behalf of the state of Georgia.

THE FAREWELL ADDRESS OF GEORGE WASHINGTON, PRESIDENT, TO THE PEOPLE OF THE UNITED STATES, SEPTEMBER 17, 1796.

Friends and Fellow-citizens:

The period for a new election of a citizen to administer the Executive Government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprize you of the resolution I have formed, to decline being considered among the number of those out of whom a choice is to be made.

I beg you, at the same time, to do me the justice to be assured that this resolution has not been taken without a strict regard to all the considerations appertaining to the relation which binds a dutiful citizen to his country; and that, in withdrawing the tender of service, which silence, in my situation, might imply, I am influenced by no diminution of zeal for your future interest; no deficiency of grateful respect for your past kindness; but am supported by a full conviction that the step is compatible with both.

The acceptance of, and continuance hitherto in,

the office to which your suffrages have twice called me, have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire. I constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which I had been reluctantly drawn. The strength of my inclination to do this, previous to the last election, had even led to the preparation of an address to declare it to you; but mature reflection on the then perplexed and critical posture of our affairs with foreign nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea.

I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety; and am persuaded, whatever partiality may be retained for my services, that, in the present circumstances of our country, you will not disapprove my determination to retire.

The impressions with which I first undertook the arduous trust were explained on the proper occasion. In the discharge of this trust, I will only say, that I have with good intentions contributed towards the organization and administration of the Government the best exertions of which a very fallible judgment was capable. Not unconscious in the outset of the inferiority of my qualifications, experience, in my own eyes—perhaps still more in the eyes of others—has strengthened the motives to diffidence of myself; and every day the increasing weight of years admon-

ishes me, more and more, that the shade of retirement is as necessary to me as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe that, while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment which is intended to terminate the career of my public life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I owe to my beloved country for the many honors it has conferred upon me; still more for the steadfast confidence with which it has supported me; and for the opportunities I have thence enjoyed of manifesting my inviolable attachment, by services faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise, and as an instructive example in our annals, that, under circumstances in which the passions, agitated in every direction, were liable to mislead; amidst appearances sometimes dubious, vicissitudes of fortune often discouraging; in situations in which, not unfrequently, want of success has countenanced the spirit of criticism,—the constancy of your support was the essential prop of the efforts, and a guarantee of the plans, by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing vows, that Heaven may continue to you the choicest tokens of its beneficence; that your union and brotherly affection may be perpetual; that the

free Constitution, which is the work of your hands, may be sacredly maintained; that its administration, in every department, may be stamped with wisdom and virtue; that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete, by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection, and the adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop; but a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger natural to that solicitude, urge me, on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments, which are the result of much reflection, of no inconsiderable observation, and which appear to me all-important to the permanency of your felicity as a people. These will be afforded to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel; nor can I forget, as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The unity of government, which constitutes you one people, is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real inde-

pendence—the support of your tranquillity at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee that, from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed,—it is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can, in any event, be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens by birth or choice, of a common country, that country has a right to concentrate your affections. The name of *American*, which belongs to you in your national capacity, must always exalt the just pride of patriotism, more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You

have, in a common cause, fought and triumphed together; the independence and liberty you possess are the work of joint counsels and joint efforts, of common dangers, sufferings, and successes.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest; here every portion of our country finds the most commanding motives for carefully guarding and preserving the union of the whole.

The North, in an unrestrained intercourse with the South, protected by the equal laws of a common government, finds, in the productions of the latter, great additional resources of maritime and commercial enterprise, and precious materials of manufacturing industry. The South, in the same intercourse, benefiting by the agency of the North, sees its agriculture grow, and its commerce expand. Turning partly into its own channels the seamen of the North, it finds its particular navigation invigorated; and while it contributes, in different ways, to nourish and increase the general mass of the national navigation, it looks forward to the protection of a maritime strength to which itself is unequally adapted. The East, in like intercourse with the West, already finds, and in the progressive improvement of interior communication, by land and water, will more and more find, a valuable vent for the commodities which it brings from abroad, or manufactures at home. The West derives from the East supplies requisite to its growth and comfort; and what is perhaps of still greater consequence, it must, of necessity, owe the secure enjoyment of indispen-

sable outlets for its own productions, to the weight, influence, and the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interest as one nation. Any other tenure by which the West can hold this essential advantage, whether derived from its own separate strength, or from an apostate and unnatural connexion with any foreign power, must be intrinsically precarious.

While, then, every part of our country thus feels an immediate and particular interest in union, all the parts combined cannot fail to find, in the united mass of means and efforts, greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and what is of inestimable value, they must derive from union an exemption from those broils and wars between themselves, which so frequently afflict neighboring countries, not tied together by the same government; which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues, would stimulate and imbitter. Hence, likewise, they will avoid the necessity of those overgrown military establishments, which, under any form of government, are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty; in this sense it is that your union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit

the continuance of the Union as a primary object of patriotic desire. Is there a doubt, whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation, in such a case, were criminal. We are authorized to hope, that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy issue to the experiment. It is well worth a fair and full experiment. With such powerful and obvious motives to Union, affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those, who, in any quarter, may endeavor to weaken its bands.

In contemplating the causes which may disturb our Union, it occurs as a matter of serious concern that any ground should have been furnished for characterizing parties by geographical discriminations—Northern and Southern—Atlantic and Western: whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart-burnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our western country have lately had a useful lesson on this head; they have seen in the negotiation by the Executive, and in the unanimous ratifi-

cation by the Senate, of the treaty with Spain, and in the universal satisfaction at that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them, of a policy in the General Government, and in the Atlantic States, unfriendly to their interests in regard to the Mississippi: they have been witnesses to the formation of two treaties—that with Great Britain, and that with Spain, which secure to them every thing they could desire in respect to our foreign relations, towards confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages on the Union by which they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their brethren, and connect them with aliens?

To the efficacy and permanency of your Union, a Government for the whole is indispensable. No alliance, however strict between the parts, can be an adequate substitute; they must inevitably experience the infractions and interruptions which all alliances, in all time, have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a constitution of government better calculated than your former for an intimate Union, and for the efficacious management of your common concerns. This government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence

and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government: but the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government, presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive to this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force, to put in the place of the delegated will of the nation, the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans, digested by common counsels, and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men, will be enabled to sub-

vert the power of the people, and to usurp for themselves the reins of Government; destroying, afterwards, the very engines which had lifted them to unjust dominion.

Towards the preservation of your government, and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitution of a country; that facility in changes, upon the credit of mere hypothesis and opinion, exposes to perpetual changes, from the endless variety of hypothesis and opinion; and remember, especially, that for the efficient management of your common interests, in a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty, is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to

maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you, in the most solemn manner, against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes, in all Governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which, in different ages and countries, has prepetrated the most horrid enormities, is itself a frightful despotism. But this leads, at length, to a more formal and permanent despotism. The disorders and miseries which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual; and, sooner or later, the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation on the ruins of public liberty.

Without looking forward to an extremity of this kind (which, nevertheless, ought not to be entirely out of sight,) the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

It serves always to distract the public councils, and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another; foments, occasionally, riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself, through the channels of party passions. Thus the policy and the will of one country are subjected to the policy and will of another.

There is an opinion that parties, in free countries, are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This, within certain limits, is probably true; and in governments of a monarchical cast, patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of the popular character, in Governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume.

It is important, likewise, that the habits of thinking, in a free country, should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding, in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all

the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it which predominates in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal, against invasions by the others, has been evinced by experiments, ancient and modern; some of them in our own country, and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be, in any particular, wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free Governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any partial or transient benefit which the use can, at any time, yield.

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connexions with private and public felicity. Let it simply be asked, where is the security

for property, for reputation, for life, if the sense of religious obligation *desert* the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles.

It is substantially true, that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who, that is a sincere friend to it, can look with indifference upon attempts to shake the foundation of the fabric?

Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible; avoiding occasions of expense by cultivating peace, but remembering also that timely disbursements to prepare for danger, frequently prevent much greater disbursements to repel it; avoiding, likewise, the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of peace to discharge the debts which unavoidable wars may have occasioned; not ungenerously throwing upon posterity the burden which we ourselves ought to

bear. The execution of these maxims belongs to your representatives, but it is necessary that public opinion should co-operate. To facilitate to them the performance of their duty, it is essential that you should practically bear in mind, that towards the payment of debts there must be revenue; that to have revenue there must be taxes; that no taxes can be devised, which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment inseparable from the selection of the proper objects (which is always a choice of difficulties,) ought to be a decisive motive for a candid construction of the conduct of the government in making it, and for a spirit of acquiescence in the measures for obtaining revenue, which the public exigencies may at any time dictate.

Observe good faith and justice towards all nations; cultivate peace and harmony with all; religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that, in the course of time and things, the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan, nothing is more

essential than that permanent inveterate antipathies against particular nations, and passionate attachments for others, should be excluded; and that, in place of them, just and amicable feelings towards all should be cultivated. The nation which indulges towards another an habitual hatred, or an habitual fondness, is, in some degree, a slave. It is a slave to its animosity or to its affection; either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another, disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable, when accidental or trifling occasions of dispute occur. Hence frequent collisions, obstinate, envenomed, and bloody contests. The nation, prompted by ill will and resentment, sometimes impels to war the government, contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts, through passion, what reason would reject; at other times it makes the animosity of the nation subservient to projects of hostility, instigated by pride, ambition, and other sinister and pernicious motives. The peace often, sometimes perhaps the liberty, of nations has been the victim.

So, likewise, a passionate attachment of one nation to another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest, in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter, without adequate inducement or justification. It

leads also to concessions to the favorite nation of privileges denied to others, which is apt doubly to injure the nation making the concessions; by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill will, and a disposition to retaliate, in the parties from whom equal privileges are withheld; and it gives to ambitious, corrupted, or deluded citizens (who devote themselves to the favorite nation) facility to betray, or sacrifice the interest of their own country, without odium; sometimes even with popularity; gilding with the appearance of a virtuous sense of obligation, a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practise the art of seduction, to mislead public opinion, to influence or awe the public councils! Such an attachment of a small or weak, towards a great and powerful nation, dooms the former to be the satellite of the latter.

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be *constantly* awake; since history and experience prove that foreign influence is one of the most baneful foes of republican Government. But that jealousy, to be useful, must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defence

against it. Excessive partiality for one foreign nation, and excessive dislike for another, cause those whom they actuate to see danger only on one side, and serve to veil, and even second, the arts of influence on the other. Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious; while its tools and dupes usurp the applause and confidence of the people, to surrender their interests.

The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connexion as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests, which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her freindships or enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient Government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon, to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose

peace or war, as our interest, guided by justice, shall counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world; so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronising infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs, that honesty is always the best policy. I repeat it, therefore, let those engagements be observed in their genuine sense. But, in my opinion, it is unnecessary, and would be unwise to extend them.

Taking care always to keep ourselves, by suitable establishments, on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, and a liberal intercourse with all nations, are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand; neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying, by gentle means, the streams of commerce, but forcing nothing; establishing, with powers so disposed, in order to give trade a stable course, to define the rights of our merchants, and to enable the Government to support them, conventional rules of

intercourse, the best that present circumstances and mutual opinions will permit, but temporary, and liable to be, from time to time, abandoned or varied, as experience and circumstances shall dictate; constantly keeping in view, that it is folly in one nation to look for disinterested favors from another; that it must pay, with a portion of its independence, for whatever it may accept under that character; that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect, or calculate upon, real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old and affectionate friend, I dare not hope they will make the strong and lasting impression I could wish; that they will control the usual current of the passions, or prevent our nation from running the course which has hitherto marked the destiny of nations; but if I may even flatter myself that they may be productive of some partial benefit, some occasional good, that they may now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigues, to guard against the impostures of pretended patriotism,—this hope will be a full recompense for the solicitude for your welfare by which they have been dictated.

How far, in the discharge of my official duties, I have been guided by the principles which have been delineated, the public records, and other evidences of my conduct, must witness to you and the world.

To myself, the assurance of my own conscience is, that I have at least believed myself to be guided by them.

In relation to the still subsisting war in Europe, my proclamation of the 22d of April, 1793, is the index to my plan. Sanctioned by your approving voice, and by that of your Representatives in both houses of Congress, the spirit of that measure has continually governed me, uninfluenced by any attempts to deter or divert me from it.

After deliberate examination, with the aid of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take, and was bound in duty and interest to take, a neutral position. Having taken it I determined, as far as should depend upon me, to maintain it with moderation, perseverance, and firmness.

The considerations which respect the right to hold this conduct, it is not necessary on this occasion to detail. I will only observe, that, according to my understanding of the matter, that right, so far from being denied by any of the belligerent powers, has been virtually admitted by all.

The duty of holding a neutral conduct may be inferred, without any thing more, from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity towards other nations.

The inducements of interest, for observing that conduct, will best be referred to your own reflections and experience. With me, a predominant motive has

been to endeavor to gain time to our country to settle and mature its yet recent institutions, and to progress, without interruption, to that degree of strength and consistency which is necessary to give it, humanly speaking, the command of its own fortunes.

Though in reviewing the incidents of my administration, I am unconscious of intentional error; I am, nevertheless, too sensible of my defects not to think it probable that I may have committed many errors. Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope, that my country will never cease to view them with indulgence; and that, after forty-five years of my life dedicated to its service with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Relying on its kindness in this, as in other things, and actuated by that fervent love towards it which is so natural to a man who views in it the native soil of himself and his progenitors for several generations, I anticipate, with pleasing expectation, that retreat in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow-citizens, the benign influence of good laws under a free Government—the ever favorite object of my heart—and the happy reward, as I trust, of our mutual cares, labors, and dangers.

GEORGE WASHINGTON.

United States, 17th September, 1796.

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